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ABSTRACT

A congressional hearing examined the effects of alcohol labeling and marketing on Native American health and culture. The focus of the hearing was on "Crazy Horse" malt liquor, a product named for the spiritual and political leader of the Native American Sioux. Following opening remarks by presiding committee chairwoman, Patricia Schroeder, the brewery in question, by letter, objected to not being allowed to participate in the hearing and denied the allegation of targeting Native Americans in marketing its product. A fact sheet provides information on the following issues: (1) alcohol as a major cause of disease, injury, and death among Native Americans; (2) the high rate of alcohol use among Native American youth and problems associated with alcohol use such as driving under the influence, increased sexual behavior, and a high suicide rate among Native Americans; (3) the importance of cultural traditions in alcohol prevention and treatment programs for Native American youth; (4) the practice of alcohol advertisements targeting high-risk groups; and (5) public and court response to the practice of targeted advertising. Also included are testimonies and prepared statements addressing the topics covered in the fact sheet made by members of the U.S. Congress and state legislatures, federal health officials, tribal leaders, and health professionals. (LP)

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CONFRONTING THE IMPACT OF ALCOHOL LABELING AND MARKETING ON NATIVE AMERICAN HEALTH AND CULTURE

ED355061

HEARING

BEFORE THE

SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, MAY 19, 1992

Printed for the use of the
Select Committee on Children, Youth, and Families

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CONFRONTING THE IMPACT OF ALCOHOL LABELING AND MARKETING ON NATIVE AMERICAN HEALTH AND CULTURE

TUESDAY, MAY 19, 1992

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON CHILDREN,
YOUTH, AND FAMILIES,
Washington, DC.

The select committee met, pursuant to call, at 9:30 a.m., in Room 2359, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the select committee) presiding.

Members present: Representatives Schroeder, Johnson, Wolf, Smith, and Walsh.

Also present: Representative Kennedy and Senator Pressler.

Staff present: Karabelle Pizzigati, staff director; Jill Kagan, deputy staff director; Thomas Brooks, professional staff; May Kennedy, professional staff; Carol Statuto, minority deputy staff director; Mary Jordan, research assistant; and Joan Godley, committee clerk.

Chairwoman SCHROEDER. Well, I think that I will go ahead and start the hearing this morning. We are very honored to have some very, very distinguished people here to kick off the hearing. I also want to say that there has been some question from the brewery that we will be talking about. I have a letter from them saying that they wanted to appear and I will put it in the record.

[The information follows:]

BEVERAGE DISTRIBUTION CONSULTANTS
Antitrust, Distribution and Trade Regulation Matters

May 18, 1992

Honorable Patricia Schroeder
Chairwoman
House Select Committee on Children,
Youth and Families
385 House Office Building Annex 2
Washington, D.C. 20515-8401

Dear Representative Schroeder:

Although I have been a supporter and admirer of yours for many years, I would like to express extreme disappointment with your decision to not allow a spokesman for Hornell Brewing Company to address your hearing on "Confronting the Impact of Alcohol Labeling and Marketing on Native American Health and Culture". While we appreciate the call we received from Tom Brooks to let us know that the hearing will take place and focus on a single brand, The Original Crazy Horse Malt Liquor. We believe it is entirely unfair and inappropriate to invite and limit the entire agenda to those who oppose our product category and our brand name selection. It is unprecedented to focus disparagingly on a particular brand and refuse to permit the company responsible for bringing that product to market to effectively be heard at the same time as its harshest critics.

In a country based on freedom of speech and guarantees of full, fair and balanced access to government, it is hard to believe a Congressional Committee can explore an issue in an unbiased, policy-making framework without first obtaining any information from the first-hand source, in this case, the brand owner and marketer.

Just as Surgeon General Novello traveled to South Dakota to hold a press conference where she incorrectly criticized Hornell without informing us that she had any concerns about our product, your committee is making erroneous assumptions and derogatory statements relative to our company and our products and disparaging the marketing motives of this small, family enterprise.

As one example,you stated in your hearing notice that the brand "appears to target groups at high risk of alcohol problems." That is absolutely incorrect and untrue. When a similar falsity was discovered by the Surgeon General, she altered her prepared speech and turned her anger toward another false charge that the brand targets "Yuppies." There have been like gross misstatements publicly issued by an ATF spokesperson, after the company voluntarily met its only expressed regulatory objection pressed at our meeting with ATF officials, where Hornell offered to make the single modification to the appearance of the package, despite the fact that ATF has never issued rules about when and how a label approval can be cancelled months after issuance and ignores the basic precepts of "due process." The only proposals the company has rejected have been generated by threats of boycott by a very few individuals and by a government official, which would destroy the personal capital investment made by the company's family owners in reliance on the ATF approval in February.If you and your colleagues were willing to listen to the other side of the story, I suspect you might change your opinions.

I can't help but notice that this staged controversy and the Congressional and agency attention being given to The Original Crazy Horse Malt Liquor comes at a time that both the federal and state governments, and other affected industry members and advocacies are still trying to sort out and prioritize a maze of conflicting health, social, business development competitiveness and "federalism" policy issues.

We get the distinct impression that the finger of blame is being pointed at Hornell as a way to energize health, social and cultural advocacies into forcing Congress to pressure ATF and state alcohol control agencies (and, perhaps also state departments of health) to choose among contradictory political philosophies regarding how to deal with the alcohol abuse problem in our nation. Some of these proposals Hornell agrees with, but until Congress and the agencies decide between a return to Prohibition and consumers' freedom of choice, malt beverages remain a legitimate product. No single entrepreneur should be targeted by governmental power for censure or unwarranted penalty, or be accused of marketing a socially unacceptable product or brand, particularly when, as here, Hornell, in an effort to grow and create new jobs and new domestic and export markets, has merely done all it could do, and what is permitted under the dictates of commercial free speech and current alcoholic beverage control law.

A free society requires freedom of choice in many areas, not the least of which is the consumers right to select among products they find attractive or distasteful. They vote with their pocketbooks. Political and cultural correctness is not, and should not become, a standard of legal or regulatory duty in a competitive, free-enterprise system, and such clearly goes far beyond the Administration's Council on Competitiveness' stands relating to the proper role of governmental intervention in the private sector.

If you would like to learn more about Hornell's position in the future, I hope you will contact me, or our other lead spokesman, former Congressman Jim Mattox at 512-474-2900. And, even though you will not allow us to speak at the hearing, I plan to represent the company as an observer so that we will be in a position to respond to questions after the fact..

Thank you for your time and consideration.

Sincerely,

BEVERAGE DISTRIBUTION CONSULTANTS

Hank Shafran
Communications Consultant

Chairwoman SCHROEDER. What I want to make perfectly clear is that the hearing does not address the issue of whether we think they are doing something illegal at this time. We understand that the laws do not reach to this type of an issue, and so the issue is whether we need to change the laws, and I want to make that perfectly clear.

Secondly, they talked about free speech in their letter. But this clearly is commercial speech, which has been treated differently by the courts, and we will be addressing that in the second panel.

This select committee has been very concerned about risky behavior of teens. We have also helped release the report on Native Americans, their problems with alcoholism, and how alcoholism among Native American teens occurs at a much higher rate than even what exists in the rest of our adolescent population.

We are very concerned about the practice of appearing to target a product to a group which is very much at risk. We understand why commercially that might be a very savvy thing to do, but we find that saddens us very much. I think we would be equally as offended if you had Martin Luther King Malt Liquor which would clearly be targeted to young males of African-American descent or others.

So while we know this is not illegal, we do want to look at this type of targeting to our young people because this Select Committee on Children, Youth, and Families has been very, very active in areas affecting our adolescents, and our adolescents appear to be much more at risk than adolescents in other western industrialized countries.

This morning, as we look at this issue of what to do about Crazy Horse, we are reminded that there has been prior attention focused on PowerMaster and other things that appeared to be targeted to different segments of our youth, and we have also seen these kind of things going on with cigarettes, where they have targeted certain groups in the population.

Since these all go right to the health and to the well-being of a person, it is very troubling. I am going to put my full statement in the record.

[Opening statement of Hon. Patricia Schroeder follows:]

OPENING STATEMENT OF HON. PATRICIA SCHROEDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO AND CHAIRWOMAN, SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES

Alcohol is ravaging families throughout the nation, none more severely than Native Americans, whose people suffer alcoholism at a rate six times the national average. Yet, today, we address the ugly practice of targeting a product to a group so at risk of alcohol abuse that Native American youth have identified it as their number one problem.

In this hearing, the Select Committee will examine the effects of alcohol labeling and marketing on Native American health and culture. In a hearing held last November, the Select Committee looked at strategies to stem the epidemic of teen drinking. Today, we must confront the efforts that thwart our success—the callous misuse of cultural symbols to target and advertise alcohol to at-risk groups.

The focus of today's hearing is "Crazy Horse" malt liquor, but the issue is hardly new. Recent attention has focused on "St. Ides" and "PowerMaster," malt liquors which appeared to target black youth and were forced off the market. Last week, "PowerMaster" reappeared as "Colt 45 Premium," complete with an advertising campaign which appears to promise potential drinkers financial and sexual success.

There have been numerous other controversial products that follow the same vein and target groups that are already vulnerable to alcohol abuse.

Alcohol advertising even reaches the very young—one study found that children identified Spuds McKensie as the canine advertising symbol of Budweiser beer eight times more often than they knew that "Coke is the real thing!"

"Crazy Horse" malt liquor is currently sold in 14 states and the District of Columbia. The product is named for the spiritual and political leader of the Native American Sioux who vehemently opposed the use of alcohol and predicted that its abuse would imperil his people's existence. The front label of this malt liquor features an image of a Native American in full ceremonial dress and includes the words, "The Original Crazy Horse Malt Liquor" and "Product of America." The back label states:

> The Black Hills of Dakota, steeped in the history of the American West, home of Proud Indian Nations.
>
> A land where imagination conjures up images of blue clad Pony Soldiers and magnificent Native American Warriors.
>
> A land still rutted with wagon tracks of intrepid pioneers.
>
> A land where wailful winds whisper of Sitting Bull, Crazy Horse and Custer.
>
> A land of character, of bravery, of tradition.
>
> A land that truly speaks of the spirit that is America.

The naming of a malt liquor for one of the most revered spiritual and political leaders of the Native American Sioux is at best an insensitive decision. But the 40-ounce bottle size—ideal for binge drinking—and the sale of this product in low-income, inner-city neighborhoods where many urban Native Americans live, suggest a crafty and disturbing marketing strategy targeted to Native Americans at risk of alcohol abuse.

In recent months, Native American tribal leaders have spoken with one voice in demanding that this product be renamed or taken off the shelves. The Surgeon General and Members of Congress have publicly condemned this product. Despite repeated pleas, the owners of "Crazy Horse" malt liquor have refused to withdraw it.

This issue touches on the broader issue of alcohol abuse and consumer well-being. I am already crafting legislation that would mandate consumer information on labels. Consumers need facts, not seductive, cynical advertising campaigns designed to associate alcohol with promises of the good life.

Today, we again welcome the Surgeon General to discuss this issue as an outgrowth of her concern for the serious problem of alcohol abuse, as well as the witnesses who travelled long distances to discuss this important issue. Your testimony will add valuable insight on ways to address the threat of alcohol facing all of our young people.

Chairwoman SCHROEDER. Basically, we know that Crazy Horse was an incredible spiritual and political leader of the Native American Sioux. We know he also vehemently opposed the use of alcohol. So I am sure he is very pleased that people are coming forward and saying, "Please don't use his name in a way that would imperil what he wanted to be his legacy to his people by instead commercially distorting it."

I am very honored to have the gentleman from South Dakota who has been right at our side through all of this and been very sensitive to these issues and I would like to yield to him at this time.

CONFRONTING THE IMPACT OF ALCOHOL LABELING AND MARKETING ON NATIVE AMERICAN HEALTH AND CULTURE

A FACT SHEET

ALCOHOL IS A MAJOR CAUSE OF DISEASE, INJURY AND DEATH AMONG NATIVE AMERICANS

- The rate of alcoholism among Native Americans is six times greater than that of the general population. Accidents and chronic liver disease (cirrhosis), the leading causes of death for Native Americans ages 25-44, are alcohol-related. (Blum, 1992; Indian Health Service, 1991)

- Native American infants are 20 times more likely to be born with Fetal Alcohol Syndrome than other U.S. infants. (National Institute on Alcohol Abuse and Alcoholism, 1991)

- Between 1980 and 1989, Native Americans in New Mexico were nearly eight times more likely to die in pedestrian/motor vehicle crashes and 30 times more likely to die of hypothermia than whites, and 90% were highly intoxicated at death. (Gallaher, et al, 1992)

NATIVE AMERICAN YOUTH ARE RAVAGED BY ALCOHOL

- Surveys conducted during 1988 and 1990 showed that, among 12th graders, 53.8% of Reservation Indian youth were at high or moderate risk from drug and alcohol use, compared with 27.7% of Anglo youth. (Beauvais, in press)

- Until ninth grade, reported alcohol use among Native Americans parallels levels seen in other youth. It escalates dramatically after that time, particularly in males. By the twelfth grade, one male in four is a problem drinker. (Blum, 1992)

- In a recent 15 state survey of 14,000 Native American youth, one in three reported driving under the influence of alcohol. Among 15 to 19-year-old Native American youths, death from motor vehicle injuries occurred at twice the rate of youth from all other groups. (Blum, 1992)

- Frequency of alcohol use was significantly associated with sexual behavior in a study of ninth and tenth grade Native American

students. Half of the sexually active students in a predominantly Navajo sample reported engaging in sex while drunk, thus increasing risk of HIV infection and pregnancy. (Rolf, 1992)

- An estimated 80% of suicides among Native Americans are alcohol-related. The death rate from suicide for Native American adolescents is 2.6 times that of adolescents of other racial and ethnic backgrounds. An estimated one in six Native American teens has attempted suicide, a rate four times higher than adolescents in the general U.S. population. (Hodgkinson, 1990; Blum, 1992; Office of Technology Assessment, 1990)

CULTURAL TRADITIONS IMPORTANT IN ALCOHOL PREVENTION AND TREATMENT PROGRAMS FOR NATIVE AMERICAN YOUTH

- A lack of strong integration into either modern or traditional society has been identified as a risk factor for alcohol abuse for Native American youth. (May, 1986)

- United National Indian Tribal Youth, Inc. (UNITY), a national organization comprised of 45 Native American youth councils, has designated Sobriety and Heritage as key "paths" in the "Journey to the year 2000" to be undertaken by Indian youth, the "healing generation." (UNITY, 1992)

- After a 14-session prevention program designed to reduce the risks of AIDS and substance abuse in Native American teens, ninth and tenth grade students were found to know more about AIDS and drugs, to have increased their intentions to reduce associated risks, and to have progressed in the communication skills needed to avoid these risks. The statistically significant gains resulted from a curriculum that added traditional Indian health beliefs to more typical prevention program content. (Rolf, 1992)

ALCOHOL ADVERTISEMENTS TARGET HIGH-RISK GROUPS

- A survey conducted for the Bureau of Alcohol, Tobacco and Firearms found that 80% of the population believed that "alcohol advertising influences underage youth to drink alcoholic beverages." (Opinion Research Corporation, 1988)

- Findings from individual, hour-long, in-home interviews of 468 fifth and sixth graders showed that increased exposure to television ads for alcohol resulted in greater familiarity with brands, stronger

beliefs that beer drinking was "cool" and that it enhanced social situations, and greater expectations that the children would drink as adults. When asked to match ads with products, 82% correctly paired a dog, Spuds McKensie, with "Bud Lite," while only 10% correctly paired the slogan, "It's the Real Thing," with Coca Cola. (Wallack & Grube, 1990)

- One count of billboards in Los Angeles advertising alcoholic beverages numbered 1373. While only 15% of the City's population was African-American, nearly half the billboards were in largely African-American-populated areas of the city and the ads depicted African Americans. African Americans drink less per capita, but they have more alcohol-related problems than whites. (Hacker, et al, 1989)

- In 1988, one brewer spent $8.6 million dollars on Hispanic media coverage, making this company the third largest advertiser in the Hispanic community. Ads targeting Latinos appeal to traditions, images and norms; increased advertising has been accompanied by increased consumption, especially among women. (Maxwell & Jacobson, 1989)

PUBLIC/COURT RESPONSE TO TARGETED ADVERTISING GROWING

- Legal petitions to federal agencies endorsed by dozens of parent, health and community groups have been filed against 10 different alcohol products. Among other charges, the petitions alleged that marketing practices targeted subgroups of the population, ignoring health risks. Products included beer, malt liquor, fortified wine and distilled spirits. (Center for Science in the Public Interest, 1992)

- The Federal Alcohol Act, in effect since 1935, prohibits alcoholic beverage advertisements that are misleading or obscene. In two recent decisions, the Supreme Court upheld further regulation of commercial speech that violates certain state interests (e.g., alcohol advertisements that endanger the public health). (Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico, 478 U.S. 328 [1986]; Board of Trustees of the State University of New York, v. Fox, 492 U.S. 469 [1989]). In another decision, the Supreme Court ruled that a state could prohibit optometrical trade names that misled the public. (Friedman v. Rogers, 440 U.S. 1 [1979]).

Mr. JOHNSON. Thank you, Madam Chair, and I ask unanimous consent that my full statement be included in the record.

Chairwoman SCHROEDER. Without objection, of course.

Mr. JOHNSON. I applaud you for conducting today's very timely hearing. You may be interested to know that I have already requested of the President of United Beers that his company stop using Crazy Horse, as the name or brand of malt liquor.

It seemed to me if the sellers of this high powered and especially dangerous product really wanted to give it an accurate name, they would call it "You Would Be Crazy to Drink this Stuff."

As you know, Madam Chairwoman, I represent the entire State of South Dakota, including its nine Indian reservations. Crazy Horse as a spiritual, political leader whose memory is honored by members of the Sioux tribes as well as all Native Americans, deserves a legacy of respect and reverence and not this type of particularly inappropriate commercial exploitation.

Thank you for holding the hearing today on the impact of alcohol labeling and marketing on Native American health and culture. Clearly, the Crazy Horse situation has particularly drawn the nation's attention to this very great problem, but this hearing can deal with the Crazy Horse issue, but as well the larger question of targeting the sale of alcoholic beverages to Americans, Native Americans in particular, Native American youths.

It is particularly repugnant to me to see the name of Crazy Horse identified with a product that has been the cause of absolutely untold suffering, pain and abuse for thousands of Native American families and individuals. In South Dakota and several other States, many reservation residents have gone so far as to declare their areas as dry in an effort to combat the problems caused by alcohol abuse.

At a time when the mass marketing of alcoholic beverages is already under fire because of misleading appeals, especially those targeted towards young people and members of minority groups. the use of Crazy Horse to promote the sale of malt liquor simply adds insult to injury. I strongly concur with Surgeon General Novello and with the American Native leaders who are pushing United Beers to drop any reference to Crazy Horse in the labeling or advertising of alcoholic beverages.

Lastly, I want to welcome fellow South Dakotans, Gregg Bourland and Mike Her Many Horses. Gregg Bourland is Chairman of the Cheyenne River Sioux Tribe and Mike Her Many Horses is Executive Director of the Oglala Sioux Tribe, both of whom have been outstanding leaders in many efforts to bring dignity and self-sufficiency to Native American peoples in South Dakota. Each has helped lead the fight to combat the scourge of alcohol abuse on our reservations. In a few short years, each has demonstrated tremendous leadership and skill in their efforts to improve living conditions at Cheyenne River and at the Oglala Sioux Tribe in Pine Ridge.

So I thank them for their presence and their leadership in this effort.

Thank you, Madam Chairwoman. I look forward to the testimony today, first, to draw greater national attention to a severe problem; and secondly, to create some groundwork for a legislative strategy

that will allow us to go forward in an aggressive and productive way in dealing with this severe issue. I yield back.

[Opening statement of Hon. Tim Johnson follows:]

OPENING STATEMENT OF HON. TIM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Madam Chairwoman, I applaud you for conducting today's hearing. You may be interested to know that I have already requested of the President of United Beers that his company stop using Crazy Horse as the name for a brand of malt liquor.

As you know, Madam Chairwoman, I represent the entire state of South Dakota, including its nine Indian reservations. Crazy Horse, as a spiritual leader whose memory is honored by members of the Sioux and other tribes, deserves a legacy of respect and reverence, not commercial exploitation.

It is particularly repugnant to me to see the name of Crazy Horse identified with a product which has been the cause of untold suffering, pain, and abuse for thousands of Native American families and individuals. In South Dakota and several other states, many reservation residents have gone so far as to declare their areas as "dry" in an effort to combat the problems caused by alcohol abuse.

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I strongly concur with Surgeon General Novello and with the Native American leaders who are pushing United Beers to drop any reference to Crazy Horse in the labeling or advertising of alcoholic beverages.

Lastly, I would also like to welcome fellow South Dakotans Gregg Bourland and Mike Her Many Horses. Madam Chairwoman, in a few short years each has already demonstrated leadership and skill in their efforts to improve living conditions on their respective reservations.

Chairwoman SCHROEDER. Thank you very much, Congressman Johnson. I am going to ask unanimous consent to put in the record the statement from Congressman Ben Nighthorse Campbell, who is the only Native American in the House. He is running for the Senate so he is a little occupied in Colorado right at this moment, but his heart is here and he is very much with you and I will put that in the record at this time and let me yield to our colleague from Massachusetts, Congressman Kennedy, who has been very interested in this issue.

[Prepared statement of Hon. Ben Nighthorse Campbell follows:]

PREPARED STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

MADAME CHAIRWOMAN, thank you for holding this hearing today. It is very important for Members of this Committee and of this body to learn about the insulting and potentially dangerous marketing ploy dreamt up by Hornell Brewing Company.

Hornell is currently marketing a highly intoxicating malt liquor under the name Crazy Horse Malt Liquor.

Using the name and reputation of a famous Native American leader, Hornell Brewing Company is robbing Chief Crazy Horse of the dignity he deserves, much as alcohol has robbed many Indian people of much of their creativity, education, and inspiration.

The label of this product refers to the Black Hills of South Dakota as, "a land where imagination conjures up images of blue clad pony soldiers and magnificent Native American Warriors." But my personal experience with alcohol paints less appealing pictures.

My father was an alcoholic and alcohol robbed him of much of his health and productivity. Alcohol robbed my sister and me of a stable family and home life.

Today alcohol use and abuse in some parts of Indian country is so bad, it is robbing not only the abusers of the life they deserve, but sacrificing the next generation.

Fetal Alcohol Syndrome, F-A-S, is a devastating disease that occurs when women abuse alcohol during their pregnancy, damaging the developing child. Although FAS knows no socio-economic or racial boundaries, Indian communities, where alcohol abuse is prevalent, are dealing with record numbers of FAS children. Irreversible symptoms of FAS include low birth weight and I.Q. scores, organ dysfunction, specific cranial deformaties, and hyperactivity.

FAS cannot be cured. Children born with this affliction lead short, unproductive, isolated lives.

On the label of Crazy Horse Malt Liquor, Hornell brewing company writes of, "a land where wailful winds whisper of Sitting Bull, Crazy Horse, and Custer." But the land they speak of is now filled with the wails of children permanently disabled by alcohol, and the whispers of their parents' remorse for severing the sacred bond between mother and child through alcohol abuse.

Using the memory of Chief Crazy Horse to sell beer is insensitive and insulting not only to his memory, but to the generations of Native Americans that have suffered from the ravages of alcohol abuse.

I hope that Hornell Brewing will learn from this incident and change the name of Crazy Horse Malt Liquor.

Thank you Madame Chairwoman for holding this hearing and for allowing me to submit this statement.

Mr. KENNEDY. Thank you very much, Chairwoman Schroeder. First of all, let me just thank Chairwoman Schroeder for her insistence on pursuing this issue with this particular committee. I think that there could be no more appropriate dominion for children, youth, and families than the concept of trying to take on the advertising practices of the American alcohol industry.

This is an industry that has shown really no boundaries whatsoever in terms of what they will do in order to promote their own profits. People that follow this issue understand the facts and I think are appalled by this latest in a long series of abuses that take place on the American public by the alcohol industry.

I first of all want to thank Surgeon General Novello, who I think has done a tremendous job in terms of taking this issue on. She and I have never quite agreed with regard to the fact that I think the—unquestionably, in my own sense, this country has got to come to grips with alcohol advertising in a way that provides warning labels on all advertising, and I think that her continued insistence on bringing to light some of the real abuses in the alcohol industry has been enormously helpful in terms of raising the awareness of the general public as to what is really taking place in this country today and she is to be commended for her continued work in this regard.

I am still hoping to convince her at some point that an out and out series of rotating warning labels on all alcohol advertising is the right and proper course to take with regard to this issue.

People understand that alcohol is a drug, and is a way that many people in this country have of relaxing and that is fine. I think many Americans use it with no serious ill health effects. The trouble is that what we really see in America today is the use of alcohol, the promotion of alcohol, and a non-recognition on behalf of the American public as to the real downside risks of so much drinking that is taking place in our country today.

We see the fact that it is the number one killer of people under the age of 34. It kills three times as many Americans as all other drugs combined. We spend in the Congress of the United States up to $12 billion fighting the war on drugs.

But here we have not only a drug that is legal, but we have a drug that can go out and kill many more Americans than crack, cocaine, and heroin, and yet we sit back in the Congress of the United States as the best produced, least accurate ads on television continuously promote the use of alcohol with our nation's youth and particularly with regard to, as we see in this case, American Indians, and yes, as well, black Americans, with the way that alcohol is promoted in the poorest neighborhoods in this country.

And it is appalling to me that we can sit—I was in the State of California just a couple of weeks ago and drove along the coast of Los Angeles and saw literally thousands and thousands and thousands of young people celebrating Bud Lite at a volleyball tournament.

I took my children down to Daytona Beach about two, three years ago and was there for the filming of a movie and saw, in front of the hotel, booth after booth after booth that was set up by the brewing companies to promote the use of beer when the only

people that were on the beach were high school students that were coming down for spring break.

On these advertisements, what do they tell us? They tell us that if you want—if a youngster, if a young guy wants to get a pretty girl, they should have a drink. If they want to win the race, they should have a drink, and in this case, perhaps one of the greatest abuses of all, to take one of the great American heroes of the Indian Nation and use that as a promotion when we know and everybody in the industry understands quite clearly the devastation that alcohol has had on the Indian Nation in this country.

And for some alcohol advertising executive to pretend that this is in some way trying to promote the good reputation of Crazy Horse when they know full well that the only thing that they are trying to do is use an emotional tag to try to promote the use of alcohol, it is the same thing that we see when we see the number of billboards that go up in the black community trying to promote the use of alcohol products that have tremendous amounts of alcohol content in them, that are advertised in other—I can't even remember what the exact name of it is, but somebody will tell us.

Chairwoman SCHROEDER. PowerMaster.

Mr. KENNEDY. PowerMaster. PowerMaster, you know, and the PowerMaster people I saw in the hearings and on television where they are saying, no, no, no, that is the last thing they want to do is create alcohol abuse in this country.

The fact is that we understand that the only reason why these advertisers are promoting their products is to get people to drink them and the reason why they are trying to get people to drink them to is to make money, and they don't care what the effect is on the American Indian people, on the black people of this country, on the young people of this country, as long as they can make money.

And it is just time I think, Madam Chairwoman, that we get on to ourselves in the Congress of the United States, begin to give the American people the real warnings that they deserve. Warn the people about fetal alcohol syndrome and the kinds of situations that we see in the American Indian Nation today with the highest rate, 20 times the rate of the rest of the population in terms of fetal alcohol syndrome.

This is nothing more than a cynical attempt to use the American Indian people and their reputation as a method of alcohol advertising. I think it is outrageous and I very much hope that we can find ways of getting the American people to begin to support the rotating warning labels on the Safe Act.

Thank you very much, Madam Chairwoman. I look forward to the other testimony.

[Opening statement of Hon. Joseph P. Kennedy II follows:]

OPENING STATEMENT OF JOSEPH P. KENNEDY II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Let me begin by thanking Chairwoman Pat Schroeder for holding this hearing, and for allowing me the opportunity to join her here today. As chairwoman of this committee, Pat works hard to air tough issues into public view—such as the issue we're facing here today. I'd also like to acknowledge the other members of this committee and Rep. Ben Nighthorse Campbell. Ben is not on this committee either, but is taking the time to show his support on this issue.

I'd also like to thank the Surgeon General, Dr. Antonia Novello. Dr. Novello has a well-deserved national reputation for her outspoken campaign against the alcohol industry's targeted advertising toward our youths and minorities. She has travelled across the nation to help spread the message to the American people about the dangers of drinking, and has repeatedly fought the alcohol industry over their deceptive advertising practices.

I'd also like to thank our witnesses for taking the time to testify today. You, and the people living in your communities have the most at stake here. I hope that the results of today's hearing will help make some real changes in your communities.

You know ladies and gentlemen, something is wrong here. We're here today to discuss the impact that alcohol has on Native Americans. They have a proud, noble history, marred significantly by the impact of alcohol on their people. Yet, this brewing company persists in their cynical distortion of the true role alcohol has played in Native American culture. They engage in a deliberate, conspicuous effort to market this product, targeted to people who are most endangered by the ravages of alcohol abuse.

We also live in a society that, instead of reining in flagrant industry abuses, gives the industries unfettered license to display only the glamorous side of the alcohol story. Let's be clear, we're not talking about the same old white man's paternalism—we're not calling for prohibition or abstinence. What we're seeking is corporate responsibility, and corporate respect for Indian culture, and corporate sensitivity to the hazards of alcohol abuse. We're looking for balance—so that the American people can make an informed choice about drinking.

We're here to remind the American people that the beer industry heeds no moral or ethical limit when it stands in the way of their profit-margins.

They'll ignore the requests and pleas of the Surgeon General, Members of Congress, and the very people that they are hurting, to keep their coffers full.

They'll turn a blind eye to the reality that:

The rate of alcoholism among Native Americans is six times greater than that of the general population.

Alcohol is the number one killer of American Indians.

Native American infants are 20 times more likely to be born with Fetal Alcohol Syndrome than other U.S. infants.

Despite this knowledge, the Hornell Brewing Company continues on its merry way—carelessly leaving a trail of ruined potential and broken families in its wake.

I don't think the alcohol industry will ever make the health and safety of the American people their first priority. That's why I have sponsored legislation known as the SAFE Act. What this bill does is provide a balanced message to the deceptive advertising practices of companies like Hornell Brewing. It requires all advertisements to display one of five health and safety messages. These messages will appear at the end of a TV or radio ad, or at the bottom of a magazine, newspaper or billboard ad. On print ads, a toll-free number will be provided so that more information can be obtained.

We need to let the American people know the full story about alcohol—every time they see an ad on TV, or listen to the radio. We need to remind the public that drinking alcohol isn't the key to success or power—despite what the alcohol industry would like our children to believe.

Thank you for your time.

Chairwoman SCHROEDER. Thank you, Congressman Kennedy. We certainly agree.

Does the gentleman from Texas have anything?

Mr. SMITH. I don't have any opening statement. As my colleague from Massachusetts just suggested, I think that one of the ways this panel can be most helpful is to try to come up with some solutions and come up with some ways that we can make sure that particular companies don't take advantage of Native American names, or those of other special significance and try to prevent them and persuade them from using such labels in the future.

Thank you, Madam Chairwoman.

Chairwoman SCHROEDER. Now I would like to call our first distinguished panel to the podium here. First we have obviously the Surgeon General, Antonia Novello who needs absolutely no introduction and has been out leading the charge on behalf of our youth regard-

ing targeting and adverse conditions that affect them. Also with us are Gregg Bourland, Chairman of the Cheyenne River Sioux, and we are pleased to have him here; Michael Her Many Horses, who is the Executive Director of the Oglala Sioux Tribe, and we are very pleased to have him; William Earle, who is the Chief, Revenue Programs Division, office of compliance operations, Bureau of Alcohol, Tobacco and Firearms from the U.S. Department of Treasury, who is accompanied by John Manfreda.

We want to welcome all of you. We do have a bottle of "Crazy Horse" here for people to see. It is huge. It really looks to me like it is targeted to binge drinking if I ever saw it, and then on the back I think there is such an attempt to try and tie it into history, which is absolutely amazing because they try to fold in the great legacy of the Dakotas and the people who live there and I find that just astounding.

Well, Surgeon General, we are very pleased to have you. We are going to put everyone's testimony in the record, and feel free to summarize. If you could do it in about five minutes, we will have more time for questions because we have to be out of the room by 11:30 and we have another panel, so if you can possibly summarize, then we would like to have some give and take with the panel.

So we welcome you again. Thank you for being here and thank you for your continuing vigilance.

STATEMENT OF ANTONIA C. NOVELLO, M.D., M.P.H., SURGEON GENERAL, U.S. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Dr. NOVELLO. Thank you, Madam Chair. I am pleased to testify in the presence of this committee again. Since your last hearing in November, I have spoken about alcohol abuse and illegal alcohol use across the land and, as the Surgeon General, my mandate is to protect the health of Americans. When I see anything that is going to be used as a marketing strategy which will decrease the health of Americans or guarantee an appeal to youth, this Surgeon General is always going to speak. So I cannot tell you how much I appreciate this opportunity, and that is why I went to South Dakota recently to be able to tell people about the problem that we are going to be discussing today in this hearing.

I come here to address the issue of alcohol products that are targeted to specific populations. I come full of frustration knowing that there is little that can be done to stop products like Crazy Horse malt liquor to appear on the shelves of this country. I can tell you too that these types of targeted products just keep coming back.

We have seen it in Cisco, we have seen it in PowerMaster, we saw it in Black Death. We see it now that it is going to be Black Hat Vodka and Black Hat Tequila with a sombrero and now here is Crazy Horse. Madam Chair, when is this going to stop?

I think that when I look at this product, I look at the outrage that the Native American community must feel. It is disrespectful. This comes along at a time when Indian nations are doing the best they can to be able to deal with the stereotype that they have many more alcohol problems than the rest of this country. I also

believe that this is disrespectful when we know that Native Americans suffer from over five times the rate of alcohol-related accidental death, double the rate of alcohol-related homicidal death, nearly double the rate of suicide and up to 20 times the rate of Fetal Alcohol Syndrome.

I am also outraged that this product is called Crazy Horse. I am extremely sensitive to the lack of respect this bottle entitles to one of the greatest spiritual leaders of the Oglala Sioux Tribe. This tasteless exploitation of such a leader should bring shame to the owners and distributors, Ferolito & Vultaggio, and to its brewers, Hornell and G. Heileman.

The owners and distributors of Crazy Horse are also disregarding the appeal that this might have to youth. I am concerned about the possible attraction of this product to the young people of this country who have just seen "Dances with Wolves" and to the Native American youths themselves who would understandably want to identify with such a noble leader and such a heroic heritage. This appeal is very worrisome to me in the presence of the fact that American Indians begin abusing alcohol and other substances at a younger age than their counterparts from other races, and while drinking among whites begins to decline after 22, we do not see this comparable decline in Native American youths.

Madam Chair, this is why I think we have to speak out, because we have to speak today about what is ethically appropriate versus what is disgraceful and inappropriate. It is my hope that Native Americans everywhere will be incensed by the attempt to manipulate their people without any regard for their health, accomplishments or the alcohol-related challenges that they face everyday.

And I must remind the audience that illegal underage drinking is not a problem only in the Native American community. I would like to submit all the other statistics the HHS Inspector General has compiled for our office to the record, but suffice it to say that, when we speak about Native American kids between 7th and 12th grades, we have realized that weekly or more frequent use of alcohol begins at a younger age for Native Americans, something that triples up to the time of 12th grade. Native American youth have the highest rates of crashes and alcohol-related accidents, and there are many more homicides, suicides, and unintentional injuries.

The manufacturers of Crazy Horse have stated that their product is not specifically targeted to Native Americans who live on reservations. There is one thing I have to say to that. It should be pointed out that over half of Native Americans live in or near urban areas and the research has found that the rate of Native American drinking is greater in urban areas than on reservations.

By their own admission, the president of the company who owns Crazy Horse said that the growth in the industry has been fastest in ethnic markets in major cities and they will go where the market is. It is obvious that the manufacturers have done their research very well because they are selling this product in places where the Native Americans are known to live: Colorado, Michigan, Ohio, Maryland, New Jersey and New York. I am also extremely discouraged that the Bureau of Alcohol, Tobacco and Firearms cannot stop this product.

The Bureau of Alcohol, Tobacco and Firearms evidently told the owners and distributors of Crazy Horse time and time again that it was the height of social irresponsibility to adopt this name and this marketing strategy. BATF, however, can only reject the label if it is false, disparaging, deceptive, or misleading.

I personally feel that this product indeed fits that characterization and that is why I am glad that we have this opportunity to talk about it. To me, Madam Chair, the problem with Crazy Horse malt liquor is truly one of intensive marketing to vulnerable groups and the inability of the government with the best intentions to respond adequately in order to stop it.

This situation and the solution to this problem will reside in making the industry aware of their responsibility and the public more sensitive to the fact that public opinion can and will make a difference. An industry that for too long ignores what the public needs or what the public wants will find that this public will eventually turn off.

Most importantly, an industry segment that tries to make a buck at the expense of people's pride or people's weaknesses should be doomed for failure. As I have done before with things that have crossed that fine line of acceptability and good taste, like with Cisco, PowerMaster, and Black Death Vodka, I am asking for a unified effort and a public outcry.

Together, we can do what none of us can do alone. I look to the leaders of the Indian Nation to help stop this exploitation and to use public outrage and alert the Nation of this marketing ploy. We must tell the alcohol industry and segments of it in particular that we have had enough disease, enough disability, and enough death. I say enough is enough.

Madam Chair, I thank you for bringing this issue to the American public. Thank you Madam Chair.

Chairwoman SCHROEDER. Thank you, so much and thank you for making time on your very busy calendar to address this issue.

[Prepared statement of Antonia C. Novello, M.D., M.P.H., follows:]

PREPARED STATEMENT OF ANTONIA C. NOVELLO, M.D., M.P.H., SURGEON GENERAL, U.S. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Good morning, Madame Chairman. I am pleased to testify before this Committee again. Since your last hearing in November, I have spoken out about all facets of the issue of youth and alcohol. As Surgeon General, my mandate is to protect the health of the American people. Clearly, any marketing strategy that is guaranteed to decrease the health status of Americans, and guaranteed to appeal to youth, will have the Surgeon General speaking about it. That is why I recently went to South Dakota to speak out about the product we are discussing here today, Crazy Horse Malt Liquor.

I come today to address this issue of alcohol products and their targeting to specific populations. I come full of frustration knowing that there is little that can be done to stop a product like Crazy Horse malt liquor from reaching the store shelves. These types of targeted products just keep coming back -- first it was Cisco, then PowerMaster, now out as Colt 45 Premium, then Black Death Vodka now out as Black Hat Vodka and Black Hat Tequila with a sombrero, and now Crazy Horse Malt Liquor. When will it stop?!

Madam Chairman, look at this product. What an outrage to the Native American community. This disrespectful product comes along at a time when Indian Nations throughout the country are enjoying the benefits of the most effective, most hopeful alcohol awareness and prevention programs in the Nation, and when we know

that Native Americans suffer from over five times the rate of alcohol-related accidental death, double the rate of alcohol-related homicidal death, nearly double the rate of suicide, and up to twenty times the rate of Fetal Alcohol Syndrome.

I am also outraged that this product is called Crazy Horse. What a lack of respect for one of the greatest spiritual leaders of the Oglala Sioux. The tasteless exploitation of such a leader should bring shame to the owners and distributors, Ferolito & Vultaggio, and to its brewers, Hornell and G. Heileman.

The owners and distributors of Crazy Horse are also disregarding their product's flagrant appeal to youth. I am concerned about the possible attraction of this product to the young people who have just seen "Dances with Wolves," and the Native American youth themselves who would understandably want to identify with such a noble leader and such heroic heritage. This appeal to youth is very worrisome, in the presence of the fact that American Indians begin abusing alcohol and other substances at a younger age than their counterparts from other races, and while drinking among white youth begins to decline after 22 years of age, there is <u>no evidence of comparable decline for American Indian young adults</u>.

Madam Chairman, that is why we must speak out. This is an issue about what is ethically appropriate versus what is disgraceful and inappropriate.

Native Americans everywhere should be incensed by this attempt to manipulate their people without any regard for their health, their accomplishments, or the alcohol-related challenges they face.

I must remind this audience that illegal underage drinking is not just a problem in Native American communities. A series of studies done for me by HHS Inspector General Kusserow found that: 8 million students drink weekly; junior and senior high school students drink 35 percent of all wine coolers sold in the United States and 1.1. billion cans of beer each year; more than 5 million students have binged (5 or more drinks in a row), 454,000 binge at least once a week, and 3 million binged within the last month. I am fearful that a product like Crazy Horse will become the latest "drink of choice" for young people who engage in drinking games and contests across this land.

When 130,000 Native American 7-12th graders in non-urban reservation schools were surveyed, it was found that:

o Weekly or more frequent use of alcohol begins at young ages for both Native American males and females -- for

females, rising from 8.9 percent in junior high to 13.3 percent in high school; for males, skyrocketing 3-5 percent every year to 27.3 percent in senior year.

- There are high rates of alcohol-related traffic-crash deaths and interpersonal violence in Native American youth. Of the 17 percent who reported suicide attempts, one-third were identified as potential problem drinkers.

- Native American youth have twice the death rate compared with teens from other US ethnic groups, and three times the rate of death from unintentional injuries, including traffic crashes. A large percentage of these deaths, especially male deaths, are associated with substance abuse.

Madam Chairman, the manufacturers of Crazy Horse have stated that their product is not specifically targeted to Native Americans who live on reservations. It should be pointed out that contrary to popular opinion, over half of Native Americans live in or near urban areas, and, researchers have found that the rate of Native American drinking is greater in urban areas than on reservations. By his own admission, the president of the company that owns the "Crazy Horse" brand, noted that the "growth in the industry has been fastest in ethnic markets in major cities, and, we will go were the market is." It is obvious that the manufacturers have

done their marketing research well. They are selling this product where many Native Americans are known to live -- cities in Colorado, Michigan, Ohio, Maryland, New Jersey, and New York.

I am also discouraged that BATF cannot stop this product. BATF evidently told the owners and distributors of Crazy Horse time and time again that it was the "height of social irresponsibility" to adopt such a name and marketing strategy. BATF however, can only reject a label if it is false, disparaging, deceptive or misleading. I personally feel that this product indeed fits that characterization and hope that this hearing will give us the opportunity to address this issue.

To me, the problem with Crazy Horse Malt Liquor is truly one of intensive marketing to vulnerable groups and the inability of the Government -- with the best intentions -- to respond adequately in order to stop it. The solution to this problem will reside in making the industry aware of their responsibility and the public more sensitive to the fact that public opinion will make a difference. An industry that for too long ignores what the public needs or what the public wants, eventually will find that this public will turn off.

As I have done before with other products that crossed the line of acceptability -- "Cisco," "Power Master," and "Black Death" Vodka -- I have asked for a unified effort, a public outcry.

Together we can do what none of us can do alone. I look to the leaders of the Indian Nations to stop this exploitation, to use public outrage and alert the Nation of this marketing ploy. We must tell the alcohol industry that we have had enough disease, enough disability, enough addiction, and enough death. I say enough is enough. Let them know that proud Indian Nations will not be brought to their knees.

Madam Chairman, this subject as you can see, is very important to millions of Americans. I cannot thank you enough for having brought this issue to the attention of the American public. Now, thank you for giving me the opportunity to speak before you, and I'll be glad to answer any questions you may have.

Chairwoman SCHROEDER. Mr. Bourland, we really are delighted to have you here today. The floor is yours and if you could summarize, that would be very helpful.

STATEMENT OF GREGG J. BOURLAND, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SD

Mr. BOURLAND. Thank you very much. Madam Chairperson and honorable select committee, my name is Wanbli Awanyankapi, which in our Lakota tongue means Eagles Watch Over Him, and my English name is Gregg Bourland and I am chairman of the Cheyenne River Sioux Tribe which represents the Minneconjou, Itazipco, Siha Sapa, Oohenumpa bands of the Lakota Sioux.

In 1868, our leaders met with the United States Government at Fort Laramie, Wyoming. We signed a treaty at that historic occasion and, a few years later in 1877 by an Act of Congress, most of our land and our territory was taken away from us. That same year in September Crazy Horse, Ta Sunke Witko, was mercilessly killed at Fort Robinson, Wyoming. He was one of the great, great leaders.

He was not a treaty signer. He was one of the last holdouts, and it is really a tremendous disrespect that is being put forward to the memory of Ta Sunke Witko.

In early April, I received a letter from a member of Crazy Horse's family. Crazy Horse has many, many relatives living on the Cheyenne River Reservation. His sister was a lady by the name of Julia Clown, who was also known as Iron Seater, and she was his direct sister. His mother was Minneconjou.

It has been misrepresented in history that his mother was Brouli. Actually she was Minneconjou. He has many, many direct relatives. One of the relatives wrote, and I will read a short section here. "Our family of Minneconjouna Itazipco Tiospaye requests the Tribal Council to send a resolution of protest to the Hornell Brewing Company, not to use the name of our grandfather, Crazy Horse, on their national brand to produce and sell this liquor to achieve personal gain. Many deaths come from brewing companies like Hornell in the past. The statistics show we lost loved ones to companies like them making mood-altering chemicals." The letter is quite lengthy. I will submit that to the record.

Chairwoman SCHROEDER. Without objection.

[The letter follows:]

TRUE V. CLOWN SR., DUPREE, SD.

DUPREE S.D.,
April 10 1992.

To: Honorable and Chairman of the C.R.S.T. Mr. Gregg Bourland, and Tribal Council.

Our family of Minneconjou na Itazipco Tiospaye request the Tribal Council to send a resolution of protest to the Hornell Brewing Co, not to use the name of our grand-father, Crazy Horse on their national brand to produce and sell this liqoure to achieve personal gain.

Many deaths come from brewing co. like "Hornell" in the past, statistics show we lost "loved ones" to companies like them, making mood altering chemicals.

We have produced documents to the Tribal Council concerning Crazy Horse, which clearifies any and all doubts about Crazy Horses relations still living.

My father and I meet the sculpter of Crazy Horse as he needs their approval, the family wanted their names be not mentioned in documents of Crazy Horse's monu-

ment. It is time to reveal the Last Testimony and prophesy of Crazy Horse, which was hidden from BIA chiefs, "Hang's around the Fort" Chiefs, etc. This meeting took place before the monument was made.

Crazy Horse was not a Chief—he was a spiritual leader, as he talks to Wakantanka (God) every day before hunting, battles, or just on patrol. Chief defines, a leader with many Lakota's under him, and he can sign Treaties and gets his people to surrender to opposition, making them weak, poor and lifeless.

Crazy Horse was not a Oglala Chief, as it was Red Cloud that summoned Crazy Horse to Ft. Robinson Neb. to surrender and be killed. History is a Captain Kennington grabbed Crazy Horse's left arm, and a Oglala friend, Little Big man grabbed Crazy Horse's right arm, Crazy Horse tried to wrench free, but could not. Red Cloud, American Horse, and other Oglala's stood there watching, shouting to shoot him. (Read Mari Sandoz on Crazy Horse). Crazy Horse is a Mnicoujo.

Mari Sandoz and Oglala Tiospiys said, there is no picture of Crazy Horse, and its true. Crazy Horse said, White man took my meat, water, children, woman and everything I have, but this one "god" given replica that I have he will not take away, and thats my shadow.

A picture was drawn by unidentified artists of Crazy Horse, and it was kept by the family for many years, the artist looking at my dad Mr. James Clown. He said, if Crazy Horse was alive today, he will look like this.

A Oglala Calvaryman stabbed Crazy Horse in the back, and was badly wounded, the family brought Crazy Horse back along a river, and a big tree, they camped there, until Crazy Horse died of wounds from the Lakota Oyate that he protected and loved, the Oglala's.

Crazy Horse had a short life span with his Mnicoujo, and, Itasipco, and Sihasapa, and Oohenumpa Trospiya of the Cheyenne River Sioux Reservation were they now reside, but, is remembered as a spiritual leader, and Last Testimony & prophesy has been kept here, which will be revealed in the near future.

Visions and prophasies will be revealed thru a history writer by the Clown family in the near future.

Thank you very much,

I am

True V. Clown, Sr.

Concerned people are urged to write, and bring documents pertaining to Crazy Horse as this information is not a novel, its factual.

Mr. BOURLAND. In 1987, the Cheyenne River Sioux Tribe declared a war on alcohol on our reservation and a resolution number 31387CR clearly states of our concerns about the high evidence of alcohol which has run rampant throughout our reservation. We also submit to the record resolution 14292CR which basically summarizes, says, "Therefore be it resolved, the Cheyenne River Sioux Tribe strongly protests the use of the name Crazy Horse by the Hornell Brewing Company. Be it further resolved the Cheyenne River Sioux Tribe requests the Hornell Brewing Company to immediately discontinue the use of the name of Crazy Horse in its beer." This was sent out in April to the Hornell Brewing Company. They are quite aware of the fact that we are very opposed and very much in opposition to the use of the name Crazy Horse.

I was told that Hornell Brewing Company had—or the brewers; in this case the owners of the beer, and I understand they are multiple. I heard several different names used. I don't know who they are. But I do want to say that I was told that they said that it was an honor, they were trying to honor Crazy Horse. Well, the family and the Cheyenne River Sioux Tribe, and you will have the Oglalas testify next, are saying it is not an honor. It is that simple.

If you really think it is an honor, the Indian people are telling you it is not an honor, so withdraw it. They have been told that. And yet they refuse to do that. I have two other concerns regarding the beer, and one was stated here previously, but my biggest con-

cern is the youth, the Indian youth, especially inner-city urban youth.

A lot of kids that grow up in the inner cities, places like Minneapolis and Denver, California, that grow up in these places, are always looking at themselves saying, "I know I am part Indian, but what is an Indian?" And heaven forbid that this Crazy Horse beer would be part of that answer, that they would look at this crap here and say, "Oh, this is what is an Indian." To read a label like this, I admit the label sounds good. The label talks about the Black Hills of the Dakotas and all that, but that is my third concern.

My concern is, is even though this brewer has said, "No, we are not going to market this on or adjacent to reservations, we are not going to take it out to rural country," I believe they are going to. I believe that they are eventually—it will work its way out there.

To me it looks like a tourist beer. To me this would be perfect sitting on all the shelves in communities like KeyStone and a number of areas in the Black Hills. And if it reaches the Black Hills of South Dakota, it will definitely reach the reservations.

Now, I know that the governor, and he is to be commended, George Mickelson has taken a strong opposition, as has Mr. Johnson, Senator Daschle, Senator Pressler. The people of South Dakota I believe are quite aware of this Crazy Horse beer, and the majority of them, I am sure, are in opposition to it.

That has never stopped a brewing company. Opposition of the people has never stopped them. So I would like to conclude by thanking the committee, thanking the Surgeon General, and especially yourself, Mrs. Schroeder, for your extreme interest in hopefully doing something about getting this product off the market.

Thank you very much.

Chairwoman SCHROEDER. Thank you very much, Mr. Bourland, for your very, very eloquent statement.

[Prepared statement of Gregg J. Bourland follows:]

PREPARED STATEMENT OF GREGG BOURLAND, CHAIRMAN OF THE CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SD

Dear Chairwoman Schroeder, Honorable Select Committee on Children, Youth, and Families, and Friends; I bring greetings to you from the Cheyenne River Sioux Tribe. My name is Gregg Bourland, my Indian name is Wanbli Awanyankapi, which means Eagles Watch Over Him in our native Lakota tongue. I am Chairman of the Cheyenne River Sioux Tribe which represents the Minneconjou, Siha Sapa, Oohenumpa, and Itazipco bands of the Lakota or Sioux people.

It came to our attention in early April of 1992, that G. Heileman Brewing Co. and the Hornell Brewing Company intended to market a beer bearing the name of Crazy Horse. Our tribe immediately reacted on April 10 with the passage of a resolution which requested that the name of Crazy Horse not be used by the Hornell Brewing Co. on it's new brand of beer.

The resolution sent to the Hornell Brewing Co. is very specific. In 1987 our tribe declared war on alcohol. As alcohol is our number one social problem on the reservation it was addressed in the resolution. The resolution clearly stated that Crazy Horse was a spiritual leader of the Lakota Nation and was strongly opposed to the use of intoxicating beverages or spirits.

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We clearly asked the brewer to discontinue using the name of Crazy Horse, yet it continues to be used today. The beer is on the market much to the dismay of the Lakota people. I would like to request that the Select Committee on Children, Youth and Families support us in asking the Hornell Brewing Co. and the G. Heileman Brewing Co. to discontinue the making of Crazy Horse beer for the following reasons:

Dishonor to Crazy Horse

I have been told that the brewers have said that they intended to honor Crazy Horse and the Sioux People. This is nonsense. We have made it very clear that the use of the name Crazy Horse on a bottle of beer is contrary to the memory of Crazy Horse.

I have also been told that the brewers realize that the Sioux or Lakota people are against the use of the name of Crazy Horse and yet they continue the practice.

I also disagree with the argument that Crazy Horse is a common name or part of the public at this point in history. Crazy Horse was a living, breathing human being just like anyone else. He was highly revered among the Lakota people. He has living relatives just like anyone else. They object to the desecration of his name. He was not an object or thing or a name. He was human.

Detrimental Impact on Indian Youth

I truly believe that Crazy Horse beer will have a strong detrimental impact on Indian youth, especially inner city or urban Indian youth. As the label of the beer container depicts a message of nobility, this message will mislead young Indian people into believing that it is good to drink Crazy Horse Beer.

Adolescents will feel the greatest impact from Crazy Horse Beer in that as they go through the "who am I" years of teenage life, they will invariably ask questions relating to their Indian heritage. As Crazy Horse, the man, reflects what was good and noble about our people, Crazy Horse Beer will confuse young minds by depicting itself as being related to the nobility of Crazy Horse.

Inner city and urban youth, having been removed or not being raised on an Indian reservation will be at the greatest risk. These youth traditionally have asked the question, "what is an Indian"? May God help us if Crazy

Horse Beer plays any sad part in helping to answer that question.

Rural Distribution

Again, I have been told that there are no plans by the brewer to distribute Crazy Horse Beer in rural areas. Also areas which are on or adjacent to Indian reservations. I do not believe this. If these were honorable brewing companies, then they would discontinue the use of the name of Crazy Horse as requested by my people. I believe they will try to market Crazy Horse beer to reservations eventually.

The beer label contains the words "Black Hills" and I believe the Black Hills of South Dakota will be a target market for Crazy Horse Beer. If this beer is allowed on or adjacent to the reservations of South Dakota or any other reservation for that matter, then the problems listed above with the youth will only be compounded.

Conclusion

Imagine the outcry from the **Black Community** if a brewer were to market a liquor entitled, **Martin Luther King Beer.** Or from the **Christian Community** for a **Jesus Christ White Wine.** But, it is not hard for our people to imagine this, as it is happening to us right now, through the insensitive marketing of Crazy Horse Beer.

Now is a time for us to unite against the racist bigotry that Crazy Horse Beer represents. The Lakota People extend the hand of friendship to the Select Committee on Children, Youth, and Families. We encourage you to support us in our cause to have these brewers stop misrepresenting the Lakota people in the sale of Crazy Horse Beer.

Thank you very much.

Mrs. SCHROEDER. We now turn to Michael Her Many Horses whom we are very, very pleased to have here speaking for the Oglala Sioux. Thank you for being here. The floor is yours. We look forward to hearing what you have to say.

STATEMENT OF MICHAEL I. HER MANY HORSES, EXECUTIVE DIRECTOR, OGLALA SIOUX TRIBE, PINE RIDGE SIOUX INDIAN RESERVATION, PINE RIDGE, SD

Mr. HER MANY HORSES. Thank you, Madam Chair. My name is Michael Her Many Horses. I am the Executive Director of the Oglala Sioux Tribe. Crazy Horse was a war leader among our people and all Sioux people as well.

My comments today——I have submitted written testimony, but I have several comments to make about images in this country. I guess you as the Congress can understand that you are under attack today for the image that Congress projects. Certainly, today we look at the Crazy Horse malt liquor as being targeted at specific groups in this country.

There are people who come up with advertising campaigns who are image-makers, whether they be advertisers of the television, film. They segment us, and basically by segmenting us and targeting specific products towards us, they think we are a bunch of morons. And I think Congress is letting this happen. We have to look at the issue of what is going to preserve our youth. What are we leaving them? What is their legacy?

This was the legacy of Crazy Horse. He wanted to leave a place where they could go grow up and live and raise their children and their grandchildren, and we look around us today in this country. We are not doing a very good job of carrying out his legacy. The people who market this Crazy Horse liquor say that they are targeting an upscale market. What is an upscale market in this country?

Is that the young children of the parents in the suburbs who have a little bit more opportunity than the average American? They are going to be torpedoing this beer and going to their proms and their dances and they are going to open this and not just take a couple drinks. They are going to drink the whole thing. This has high alcohol content. There are going to be parents burying their children.

You know, where are the groups that have mobilized to fight drunk driving in this country? Where are the people who are concerned about the welfare of people on the roads? There are a number of other associated issues I believe that this Crazy Horse malt liquor brings out, and one is their advertising. They have a T-shirt that they are promoting now and it has spots on it. I guess that would denote maybe perhaps a horse, you know. Drink this stuff and get crazy.

So when they target specific groups in this country, what they are saying is that we are a bunch of morons. We don't know what we are doing. We are subject to the images we receive from television and billboards, newspaper ads. I think that is very unfortunate.

Congress has within its power ways to correct this. In our communities we were glad when there was a President who said he was going to be an education President. We are still waiting for that. We are still waiting for monies to come down here and meet education needs, because we feel that these sort of campaigns and this sort of promotion will not happen if people in this country are educated about each other, if they know the American Indians' contribution to this country.

Just recently we sent hundreds and hundreds of our children and grandchildren to the Persian Gulf. What do they come home to, Crazy Horse malt liquor. Is that the message we want to send to our people who put their life on the line? I think not. You know, there is very—a lot of concern about the issue of humanities in our school, are we learning about each other? I think not. You know. The monies aren't there.

I think we are beginning to see a result of our lack of understanding and knowledge about each other when we have our cities burning now. So I think, as the American people come to grips with what is happening to this country, we have to look at the fact that we need resources for education so that we can understand one another and understand where we came from and understand our history and our legacy.

And I believe our tribe would like to ask this company to withdraw this. If not, we will take it upon ourselves to organize a national boycott of the products that they produce and anybody that is affiliated with them or any products. We have very little resources out on Pine Ridge, but what little resources we will have, we will devote to saving people from the devastating effects of this particular product.

Thank you, Madam Chair.

Chairwoman SCHROEDER. I want to thank both of you. That was very eloquent on reclaiming the heritage of Crazy Horse. Counsel also tells me that if they were trying to target the upscale markets, this costs $2.15 in Washington, DC, which is an interesting upscale market.

[Prepared statement of Michael I. Her Many Horses follows:]

PREPARED STATEMENT OF MICHAEL HER MANY HORSES, EXECUTIVE DIRECTOR, OGLALA SIOUX TRIBE, PINE RIDGE SIOUX INDIAN RESERVATION, PINE RIDGE, SD

Good morning Madame Chairman and members of the Committee. My name is Michael Her Many Horses. I am the Executive Director of the Oglala Sioux Tribe and a past member of the Oglala Sioux Tribal Council. The Pine Ridge Sioux Indian Reservation is the second largest Indian reservation in the United States. The Oglala Lakota are the largest band of the Great Sioux Nation. The Great Sioux Nation is composed of twentyone distinct reservations in five states and two Canadian provinces. In addition the Great Sioux Nation has thousands of members living in major metropolitan areas in the U.S. and Canada not to mention hundreds living overseas. The Oglala Lakota have a legacy of being peaceful, spiritual people who live in harmony with the earth. The Oglala Lakota also have a legacy of fighting to protect themselves, their elderly, their children, their land, and their way of life. The Oglala played a major role in the war of 1868 in which the Lakota Nation defeated the Army of the United States which resulted in the Fort Laramie Treaty of 1868. A young warrior distinguished himself in that war. His name was Crazy Horse. Eight years later the U.S. Government violated the 1868 Treaty which caused the war of 1876. Again in the major battles between the Lakota and the U.S. Army, Crazy Horse was a major leader. The following year, after he and his followers of men, women, elderly, and children were relentlessly pursued and attacked, he was forced to surrender for the good of his starving people. Soon after he was murdered, stabbed by a soldiers bayonet. Crazy Horse's friend, Touch-the-Clouds, remembers Crazy Horse's rallying cry in battle: "It is a good day to fight: a good day to die! Strong hearts, brave hearts, to the front! Weak hearts and

cowards, to the rear." Touch-the-Clouds was once quoted as saying that "Crazy Horse had the reputation among the whites and Indians generally of being a man of his word, and never breaking a promise." And there was more to Crazy Horse. The following is an interpretation of Crazy Horse's comments following his vision which he received during spiritual rites. "....for we are doomed to an everlasting poverty and despair unless we can contrive some means of protecting our freedom. We should come to our sense and try reviving some of the sane traditions of our grandfathers if we expect to survive through this new era that has been introduced by the greedy White Man. I for one will make every effort to uphold our primitive traditions and to fight for our liberty to the last..".

This is the man, the Oglala, who we remember today. Even now we still carry on his philosophy of fighting for what is right for the Oglala people. Now we must fight to defend his honor and to protect our people from falling victim to those who would assail the mental and physical health of our people and other Indian people. Crazy Horse has always purposely lived away from the wicked influence of the White People of his era. He knew what would befall his people when ravaged by the influence of alcohol. Now, in another era, White People are crassly using his honor and his name to profit through the sale of liqour. In an era when we are fighting the effects of alcohol on our people, when we are still fighting, as did he, for our sacred Black Hills, when we are fighting to maintain our culture and traditions, we now have to deal with

people of the same mentality from the last century. In 1924 we were made citizens of the United States. Why are our civil rights not protected? Why are people allowed to continually degrade our people and our cultures? This is the National Year of Reconciliation between Indians and the rest of America. The Oglala Lakota Nation and the Great Sioux Nation call upon your Committee, the Congress and all of the States to extinguish this racism. The Oglala Lakota Nation will call upon all Tribes and Indians to unite in an unyielding campaign against the company that markets this liquor. The lines are drawn. This company has insulted and denigrated a revered leader of our Tribe. This company is exploiting an Indian nation and all Indian people who are already suffering from alcohol abuse. Let it be known, that in the spirit of the Oglala people, we will fight until we have won because we cannot be defeated.

THE NEW YORK TIMES **OP-ED** TUESDAY, APRIL 21, 1992

Noble Savages? We'll Drink to That

Bud Cox

By Michael Dorris

CORNISH, N.H.

People of proclaimed good will have the oddest ways of honoring American Indians. Sometimes they dress themselves up in turkey feathers and paint — "cultural drag," my friend Duane Bird Bear calls it — and boogie on 50-yard lines.

Presumably they hope this exhibition of ethnographically questionable display will do their teams more good against opponents than those rituals they emulate and mock did for 19th century Cheyenne and Nez Perce men and women who — with desperation and ultimate valor, to defend their homelands from invasion.

Sometimes otherwise impeccably credentialed liberals get so swept up into honoring Indians that they beat fake tom-toms or fashion their forearms and hands into facsimiles of the axes European traders used for barter and attempt, unsuccessfully, to chop their way to victory.

Everywhere you look such respects are paid: the street names in wooded, affluent subdivisions, mumbo-jumbo in ersatz male-bonding weekends and Boy Scout jamborees, geometric fashion statements, weepy anti-littering public service announcements. In the ever popular noble-savage spectrum, red is the hot, safe color.

For centuries, flesh and blood Indians have been assigned the role of a popular culture metaphor for generations. Today, their evocation instantly connotes fuzzy images of Nature, the Past, Flight or Summer Camp. Warbonneted apparitions pasted to hair

Crazy Horse Malt Liquor and other cultural metaphors.

bill helmets or baseball caps act as opaque, impermeable curtains, solid walls of white noise that for many citizens block or distort all vision of the nearly two million native Americans today.

And why not? Such honoring relegates Indians to the long ago and thus makes them magically disappear from public consciousness and conscience. What do the 300 federally recognized tribes, with their various complicated treaties governing land rights and protections, their crippling unemployment, infant mortality and teen-age suicide rates, their manifold health problems have in common with jolly (or menacing) cartoon caricatures, wistful braves or rasp-tressed Mazola girls?

Perhaps we should ask the Hornell Brewing Company of Baltimore, manufacturers of the Original Crazy Horse Malt Liquor, a product currently distributed in New York with packaging inspired by, according to the text on the back, "the Black Hills of Dakota, steeped [my italics] in the History of the American West, home of Proud Indian Nations, a land where imagination conjures up images of blue clad Pony Soldiers and magnificent Native American Warriors."

Whose imagination? Were these the same blue clad lads who perpetrated the 1880 massacre of 200 captured, freezing Dakota at Wounded Knee? Are Pine Ridge and Rosebud, the two reservations closest to the Black Hills and, coincidentally, the two counties in the United States with the lowest per capita incomes, the Proud Nations?

Is the "stepping" a bald allusion to the fact that alcohol has long constituted the No. 1 health hazard to Indians? Virtually every other social ill plaguing native Americans — from disproportionately frequent traffic fatalities to arrest statistics — is related in some tragic respect to ethanol, and many tribes, from Alaska to New Mexico, record the highest percentage in the world of babies born disabled by fetal alcohol syndrome and effect. One need look no further than the Congressionally mandated warning to pregnant women printed in capital letters on every Crazy Horse label to make the connection.

The facts of history are not hard to ascertain: the Black Hills, the "paha sapa," the traditional holy place of the Dakota, were illegally seized by the Government, systematically stripped of their mineral wealth — and have still not been returned to their rightful owners. Crazy Horse, in addition to being a patriot to his Oglala people, was a mystic and a religious leader murdered after he voluntarily gave himself up in 1887 to Pony Soldiers at Fort Robinson, Neb. What, then, is the pairing of his name with 40 ounces of malt liquor supposed to signify?

The Hornell brewers helpfully supply a clue. The detail of the logo is focused on the headdress and not the face, it's pomp without circumstance, form without content. Wear the hat, the illustration seems to offer, and in the process fantasize yourself more interesting (or potent or tough or noble) than you are. Play at being a "warrior" from the "land that truly speaks of the spirit that is America."

And if some humorless Indians object, just set them straight. Remind them what an honor it is to be used.

Michael Dorris is author of "The Broken Cord," about fetal alcohol syndrome, and, with Louise Erdrich, "The Crown of Columbus."

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STATEMENT OF WILLIAM T. EARLE, CHIEF, REVENUE PROGRAMS DIVISION, OFFICE OF COMPLIANCE OPERATIONS, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY; ACCOMPANIED BY JOHN J. MANFREDA, ASSOCIATE CHIEF COUNSEL, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Chairwoman SCHROEDER. Mr. Earle, we welcome you from the Bureau of Alcohol, Tobacco and Firearms and we understand that what they are doing is technically legal.

We will put your statement in the record. Maybe you could help us expedite the hearing by telling us what we could do or what would give you the power to deal with this, or do you think that that is a good idea?

Mr. EARLE. Well, Madam Chair, we are very happy to be here today to appear before the committee because we at ATF share the outrage and concern over this product. I would like to read at least part of my statement into the record because I think it does clarify the position that we are in and some of the problems that we confront.

It is very short and I think it will in some ways help us to frame the issue here. Again it is a privilege to appear before the committee today. I understand that the committee has particular concerns regarding Crazy Horse malt liquor. At the end of my statement, I will be happy to answer any questions you might have.

With me today is John Manfreda. He is our chief counsel in the alcohol and tobacco area and probably knows more about the Federal Alcohol Administration Act than anybody in this town. So if you have ideas about how to change it and improve it, he is a good resource to have with us today.

Under the FAA Act we monitor and regulate alcoholic beverage labeling and advertising and certainly try to make the abuse of these products clear to the public. At every level, individuals, national organizations, State legislatures, the Congress, the White House, indeed even those in the alcohol industry, have spoken out forcibly against the mounting cost of lives lost and talents wasted as a result of alcohol abuse.

As great as our concern as citizens is, however, I have to emphasize that we are constrained by statutory authority regarding alcoholic beverage labeling and advertising. We can only do what we are allowed to do under the law and we cannot expand our regulations beyond the scope of the law in order to address related social issues.

ATF's authority with regard to alcoholic beverage labeling and advertising is established under the FAA Act. The FAA Act authorizes regulatory action to prevent the deception of the consumer and to provide consumers with adequate information about the identity of products.

Specifically, the act prohibits any labeling and advertising claims that are false, disparaging, deceptive, misleading or likely to mislead, just as the Surgeon General has suggested when we first started.

With regard to Crazy Horse brand malt liquor, the FAA Act specifically prohibits the use of a brand name that is the name of any living individual of public prominence, if the use of that name is likely to mislead the consumer into believing that the product has been endorsed or made or used by that individual. However, there is no prohibition on the use of a name of a deceased historical figure such as Crazy Horse.

Last month, ATF informed the owners of the Crazy Horse brand that the agency was concerned with several other problems in the labeling and packaging of the product. The owners of the brand have subsequently agreed to make certain modifications to the labeling. Specifically we felt that the package looked like it was a distilled spirit and was conveying the image that this was a high strength or very powerful malt liquor. We asked them to change some of the packaging and they have agreed to take off the strip stamp, the foil packaging at the top that gives the appearance of a distilled spirits product.

Unfortunately, they did not agree, however, to change the brand name. They chose to stick with the Crazy Horse brand name. While we appreciate the committee's concern that the product may be offensive to Native Americans, ATF does not have the statutory authority to require this change in the Crazy Horse brand name.

We have reiterated with the owners that we have received numerous complaints. I have met with the Surgeon General and several people concerning the product, and we believe the marketing of the product is irresponsible and not in the best interest of the alcohol beverage industry itself.

We have strongly urged the brand owners to take a more responsible and sensitive approach in this area. We share the committee's and the public's concern regarding alcohol abuse and welcome the efforts of this committee. Hearings such as these will serve to raise the public's awareness and may encourage a more responsible approach to these issues by the alcoholic beverage industry in general. I will be happy to answer any questions you might have.

Chairwoman SCHROEDER. Thank you very much.

[Prepared statement of William T. Earle follows:]

PREPARED STATEMENT OF WILLIAM T. EARLE, CHIEF, REVENUE PROGRAMS DIVISION, OFFICE OF COMPLIANCE OPERATIONS, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Madame Chairwoman, Members of the Committee:

It is a privilege to appear before this Committee to discuss the issue of alcoholic beverage labeling and advertising. I understand that the Committee has particular concerns regarding the "Crazy Horse" brand malt liquor. I will be happy to answer any questions you may have at the end of my remarks.

I would like to introduce John Manfreda, ATF's Associate Chief Counsel (Alcohol and Tobacco), who is here with me today.

As the agency responsible under the Federal Alcohol Administration Act for monitoring and regulating alcoholic beverage labeling and advertising, the Bureau of Alcohol, Tobacco and Firearms is certainly aware of the public concern regarding alcohol abuse. At every level -- individuals, national organizations, state legislatures, the Congress, the White House, and indeed many in the alcohol industry have spoken out forcibly against the mounting cost of lives lost and talents wasted as a result of alcohol abuse.

However, as great as our concern as citizens is, it should be emphasized at the outset that ATF's statutory authority is limited with regard to regulating alcoholic beverage labeling and advertising. We can only do what we are allowed to do under the law, and we cannot expand our regulations beyond the scope of the law in order to address related social issues.

ATF's authority with regard to alcoholic beverage labeling and advertising is established by the Federal Alcohol Administration Act. The FAA Act authorizes regulatory action to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity of the product. In addition, the Act provides for the regulation of labeling and advertising by setting requirements for what must be stated, and for what cannot be stated. Specifically, the Act prohibits any labeling and advertising claims that are false, disparaging, deceptive, misleading or likely to mislead.

With regard to "Crazy Horse" brand malt liquor, the FAA Act specifically prohibits the use of a brand name that is the name of any living individual of public prominence, if the use of that name is likely to mislead the consumer into believing that the product has been endorsed, made, or used by that individual. However, there is no prohibition on the use of the name of a deceased historical figure, such as Crazy Horse.

Last month, ATF informed the owners of the Crazy Horse brand that the Agency was concerned with several other problems in the labeling and packaging of the product. Although the owners of the brand have subsequently agreed to make certain modifications to the labeling and packaging of the product they have not, unfortunately, agreed to change the brand name.

While we appreciate the Committee's concern that this product may be offensive to Native Americans, ATF does not have the statutory authority to require a change in the "Crazy Horse" brand name. However, ATF has told the owners of the "Crazy Horse" brand that it has received a number of

complaints about the product, and that ATF believes that the labeling and marketing of the product is irresponsible and is not in the best interest of the alcoholic beverage industry. ATF has strongly urged the brand owners to take a more responsible approach to this sensitive issue.

We share this committee's and the public's concern regarding alcohol abuse and we welcome the efforts of this committee. Hearings such as these will serve to raise the public's awareness of these issues, and may encourage a more responsible approach to these sensitive issues by the alcoholic beverage industry.

Now, I would be glad to answer any questions you may have.

Chairwoman SCHROEDER. I am sure we all have lots of questions. What I am going to do is use my five minute timer to time people so we don't run into the next panel's time and I want to thank all of you and let us start with Congressman Johnson.

Congressman Johnson, the floor is yours.

Mr. JOHNSON. Thank you, Madam Chairwoman, and I commend all the panelists here for their positive contribution. To Chairman Bourland, this is not the first time that Native American names have been used on commercial products, Black Hills, Dakota, Lakota and so on but, in your view, does the nature of this product and the reverent name Crazy Horse make this unique and particularly objectionable to you as opposed to pickup trucks and jewelry and other things that are named after other Lakotas?

Mr. BOURLAND. Well, yes. Mostly because of the fact that Crazy Horse was very much opposed to alcohol and as a spiritual leader and having a strong belief in the great spirit or, in our language, Wakan Tanka, this would absolutely be the opposite of anything that he ever stood for, and of course it is not just the Sioux tribes that have a concern about it, but, for example, the National Congress of American Indians, and I failed to mention they have given me a statement, they are also in opposition and that represents the largest body of Indian tribes in the United States.

So we have a lot of backing in this thing and it is—you know, I think somebody said earlier here, perhaps it was Congresswoman Schroeder, that if they were to use the name of Martin Luther King, people would be offended, that the same—I put in my testimony that if somebody made a Jesus Christ white wine, I think there would be a lot of people very offended. I would be one. I would be extremely upset.

So they need to realize, Crazy Horse was a living human being and he has not only family members who his memory lives in their hearts, but he lives in the hearts of all Lakota people throughout the States of South and North Dakota, Montana, Wyoming, Nebraska, and I realize that they can't do anything about it, as they had indicated, when somebody passes on, but to us, he is still alive because he lives in our hearts and his memory is very strong, and that is what this company needs to understand.

Mr. JOHNSON. Thank you. And the label goes on to make reference to Sitting Bull, to pony soldiers and generically to Native American warriors and so certainly it does have an implication even beyond the Sioux tribe.

Michael, you made reference to a boycott. Given the current legal state of things, I am very supportive of following that route. It would seem to me that we have a business here that responds to profit and loss and to very little else given the protests that tribes have made and others have made.

Do you think that we can go ahead and make that boycott stick? Can we make that a nationwide effort that really will continue to maintain the visibility of this problem and challenge the brewery to let them know that this is not a passing concern, that this is a longstanding concern and that we will continue to fight this until the name is deleted?

Mr. HER MANY HORSES. I think we can make this boycott work because there are a lot of people who are opposed to irresponsible

behavior in this country, whether they be groups such as MADD or DADD or SADD or people who want to get drunk drivers off the road or people who want to promote responsible behavior in public, and Indian people and Indian Nations throughout this country support that, and I think we could pull this thing together and make this thing work.

I think we have to look at the historical record that Crazy Horse left. When his people were challenged and when they were confronted with adversity on the banks of the Little Big Horn River, you know, he took care of his opponents.

So it is in that spirit that we will rise to challenge these people who want to brew this product. And at Little Big Horn he said, you know, it is a good day to fight, it is a good day to die. Brave people to the front and cowards to the rear. I think we have to look at that message and take that message to these folks here.

Thank you.

Mr. JOHNSON. Even though my time expired, if I may ask just one very quick question of the Surgeon General, Dr. Novello. Would you give the prestige and the support of your office behind a boycott of this product?

Dr. NOVELLO. I cannot give you support for a boycott but I can tell you how you can help. There was a law passed in 1935, which allows things like this to continuously come forth, and I think that law is from the bygone era where the consumers were worried about little things, rather than the consumer of 1992, who is much more well informed and wants much more data.

It seems to me if we are going to make sure that the Bureau of Alcohol, Tobacco and Firearms becomes more proactive rather than reactive, we have to make sure that this law is looked upon more closely and possibly changed to be able to deal with the necessities of 1992 and not the necessities of 1935.

This is not a new prohibitionist era. It is an era in which if you are going to make attacks against vulnerable groups, then you must understand that outrage will follow. Today we hold a hearing to talk about Crazy Horse, last year about PowerMaster, tomorrow about what, Martin Luther King Ale, maybe even Ghandi Lite. Who knows, Popeye's Brew? Do we have to come here every time to make sure that the industry just changes the name and gets the publicity that perhaps they don't have with products of this quality?

Why don't we look into the law and make sure that BATF has strength to do what they want to do so that this is stopped once and for all and that should be what we should look into.

Chairwoman SCHROEDER. Thank you very much. Congressman Smith.

Mr. SMITH. Thank you, Madam Chair. Let me say at the outset that I have to confess that I find the label Crazy Horse to be insulting to American Indians, and I think that that label by its very nature is extraordinarily tempting to American Indians to drink.

Having said that, Dr. Novello and Mr. Earle, I noticed in your testimony and in the case of yours, Dr. Novello, said, "I come full of frustration knowing that there is little that can be done to stop a product like Crazy Horse malt liquor from the store shelves."

Later on, we are going to hear from Professor Destro saying regulation of the content of otherwise valid commercial speech in order to achieve what are essentially religious or cultural purposes goes to the heart of the First Amendment speech, press, and religion clauses.

Yet it seems to me that there must be something we should be able to do. Dr. Novello, you said in your testimony that the BATF can only reject a label if it is false, disparaging, deceptive, or misleading. Mr. Earle said the same thing.

What I am wondering is, why isn't that label disparaging of Native Americans? Why isn't it misleading because it might well give the sort of premature approval that might well be said to—might be seen by some individuals to be some type of an endorsement by American Indians or by American Indian chiefs or whatever or whoever it might be?

So I guess what I am wondering is that, what can this committee do, what can Congress do, and, you know, if we—it seems to me that these words, disparage, deceptive, misleading, are able to be broadly interpreted, so why can't we broadly interpret them? Why can't we say the label is disparaging and misleading?

I would like to get your response, Dr. Novello, and Mr. Earle's response as well. Make it brief because I have a couple more questions.

Dr. NOVELLO. I think your question is an interesting one and maybe the Bureau of Alcohol will be able to address it but the issue is really that the Bureau of Alcohol has about 80,000 labels every year to be handled by eight people, so one thing is—how the law is written versus what we would like the law to be.

But it seems to me, when one looks into the inability of the law as it is written today—when something that is deceptive or something that is against the pride of people, I don't think that in the regulations it exists. I do believe that we have to go back into the law as it was written in 1935 and look at it now of how a perception of people can be put into acting upon that law with much broader mandates.

Mr. SMITH. Thank you. Mr. Earle, why can't we legally define the Crazy Horse label as being misleading and disparaging and therefore have the law that prevents its use?

Mr. EARLE. That disparaging aspect is meant to relate to the relationship between companies. The way it was crafted in 1935 was to prevent one company from making a disparaging remark about a competitor, or from throwing "mud" at their products or generally undermining those products.

So the statute that we are dealing with is one that clearly defines disparaging as a commercial disparagement of one company to the other, not a disparagement of groups or individuals or associations or religions or that sort of thing.

When the act was passed, Congress was looking at this as a practice that they wanted to prevent. In fact, one of the things we are coming to the committee for today is guidance in this area. If you feel that this area needs to be broadened or this definition needs to be changed, then Congress needs to address that statute.

Mr. SMITH. That is where you could get input from Congress.

Mr. EARLE. Correct.

Mr. SMITH. I am looking for a solution here and my colleague, Mr. Johnson, mentioned the boycott possibility. It seems to me that this committee by resolution, Madam Chair, might be able to have a resolution that either condemns the use of the label or urges the Bureau of Alcohol, Tobacco and Firearms to change the definition of the statute, and it seems to me we could either do a resolution today along those lines, we could ask Congress as a whole to pass such a resolution and that is something that we might consider as well.

Chairwoman SCHROEDER. Very good thought.

Mr. SMITH. Let me lastly go to Mr. Her Many Horses, your comment, and this is an aside from what we have been talking about so far, but I can't help but respond. You mentioned that you wish we were doing more in education and particularly you criticized the President for not doing enough in education.

Mr. HER MANY HORSES. Right.

Mr. SMITH. I want to remind you that the President has taken a number—suggested a number of dramatic initiatives that are about education. A lot of them centered about school choice that would probably disproportionately benefit Native American children as well as disadvantaged children everywhere to give them more choice.

So you ask what happened to the education President. I would respond to you that he has made a number of worthwhile initiatives that I would recommend to you and that those initiatives are now languishing on the desks of Congress and we need to get them passed in order to help Native American children and other children as well.

Thank you, Madam Chair.

Chairwoman SCHROEDER. Thank you.

Congressman Walsh.

Mr. WALSH. Thank you, Madam Chairwoman. I would certainly and most strongly agree with what the panelists and the members of the committee have said. I find it not only offensive to Native Americans, but to myself as a non-Native American.

I don't have a direct blood line to George Washington but if there was a George Washington malt liquor I would be strongly offended, and I don't have a direct blood line to Crazy Horse either but I have a great respect for the traditions and to the leadership that were provided to his people.

What we can do about it, the idea of a boycott certainly has some appeal to the alcoholic beverage industry. It is, I would think, very sensitive to public sentiment and public pressure and the options that Mr. Her Many Horses mentioned, along with a number of other consumer-oriented groups I think would be very interested in participating.

From a legislative point of view, I agree with the Attorney General that we have to do something—if there is a way to get that language done, and I think there is, we must let the industry know that we are going to take a very proactive position on this rather than react each time a new label comes up. We should do that, and I would offer my support to the committee and the chair to redraw that language. I have no questions.

Chairwoman SCHROEDER. Thank you very, very much.

Congressman Wolf, do you have any questions? He has got some idea.

Mr. WOLF. I wanted to make a comment that I agree with what you are saying. Why couldn't you just change and add the words "or dead" after the name, any individual living or dead. Could you do that?

Mr. EARLE. Yes, Congressman, you could. However, that would not necessarily correct future problems with organizations or tribes. A tribe is not an individual so you might have a problem there. We would be more than willing to explore that and are already looking at language that could help in this area.

We would have to consider the ancestors, the individuals for whom the products are named, and the people who are living, the descendants of those individuals, to determine if there is a misrepresentation. Clearly, Crazy Horse would be in that category if that terminology was added.

Mr. WOLF. Could you come up with some language?

Mr. EARLE. Certainly. We would be more than happy to do that.

Mr. WOLF. Within the next week, perhaps. Could you look at it?

Mr. MANFREDA. Sir, we are currently working on legislative language, but the proposal must go to the department first.

Mr. WOLF. The reason is, I am on Treasury Appropriations, which has jurisdiction over ATF. If the chair could get the approval of the authorizing committee, Mrs. Collins, and if she does not have any objections, we could add something in the appropriations markup.

I think we are going to mark up the appropriations bill in the next week or two, and we could put something in there and resolve the problem once and for all. If you could come back with language, give it to the Chair and to me, and talk to Congresswoman Collins. We could do something next week.

Mr. EARLE. We would be happy to do that.

Chairwoman SCHROEDER. Thank you.

Congressman Kennedy.

Mr. KENNEDY. Thank you, Madam Chairwoman. First of all, if this company wants to promote its name, we ought to take this opportunity to give them their wish and let everybody know that this is the Hornell Brewing Company that is promoting this type of product and if they want to pay for their advertising, they ought to be responsible for the kind of abuses that have taken place.

I think that one of the concerns that I have is that, as disturbing as I think this particular product is for the eloquent spokespeople for the Native Americans that are coming before the panel this morning, the reality is that we see this as a continuation of abuses by the alcohol industry.

I wish there was just one single example, but the fact is that we know very, very clearly that the alcohol industry markets specifically to underaged drinkers. We know that they market specifically to people that are alcoholics and drink way too much. They promote, as we have heard in testimony before other committees by the marketing experts for the alcohol companies. They are much better off trying to market beer, for instance, to somebody who is going to drink 20 or 25 beers a day than they are trying to advertise to a full range of people.

I think anybody that watches any of the slick beer ads on television in particular understands that they send an incredibly kind of sexy message to the youth of our Nation. The alcohol abuse of women and children relates to alcohol advertising and that is also something that I think we ought to be concerned about.

So I think that while I would very definitely support Mr. Wolf in his efforts, I think the reality is it is a larger issue here and there is a larger issue about the abuse and the marketing that takes place with regard to all alcohol advertising. And I wonder, I would like to specifically hear what kinds of solutions Dr. Novello has and, you know, what her thoughts are in terms of coming up with a solution.

Now, we have heard the code of advertising that the alcohol companies come up with, "know when to say when," which is obviously an oxymoron if I have ever heard one, but the whole notion of the industry policing itself has not worked. And so what I am trying to understand is whether or not there is, in fact, some way of dealing with what seems to be a very receptive Alcohol, Firearms and Tobacco agency, with your concerns about the general state of advertising and whether or not you have some thoughts that might encompass not just the abuse of Crazy Horse, but the general tone of alcohol advertising.

Dr. NOVELLO. Mr. Kennedy, I tend to agree with many things that you said, but I must say that December 11th when I met with the industry, I found one thing that was surprising, and that was not all members of the industry are alike.

Mr. KENNEDY. That is true.

Dr. NOVELLO. And most importantly, I find that when I was able to take on Black Death Vodka, the one that helped me the most was the Distilled Spirits Council of the United States—DISCUS. So when I look into the industry—

Mr. KENNEDY. They are for a marketing share or what?

Dr. NOVELLO. Some of the industry realize that unless they self-regulate, the public will be turned off and look into what we are speaking about today, regulation by the government. In that sense, it seems to me that advertising, like you have said, worries me personally a great deal, especially when it is targeted to people without outlining the consequences of the utilization of the product depicted in the advertising itself—and that would be a complete new hearing if we had three hours to discuss that.

But I do believe that not all the industry is alike, but there is a segment of the industry that seems to, no matter what, try to make a buck at the expense of people's feeling, at the expense of people's weakness and at the expense of offending people's pride.

For that, unless they self-regulate, it seems to me that that public will turn off and ask for what most of the audience is asking today.

Mr. KENNEDY. But the reality is we know that it is not true. We know the American public does fall prey, that is why this industry spends the billions of dollars that it does to try to promote alcohol advertising. It works, so maybe—Mr. Manfreda, have you thought about the kinds of legislation that would be required to give you the opportunity when you see the abuse of underaged drinkers,

pregnant women, the abuse of women in general, that would give you the authority to police this industry?

Mr. MANFREDA. Mr. Kennedy, we have thought about it. We are studying the problem in conjunction with the Crazy Horse issue. We have no concrete proposal at this time. Drafting such a resolution leads to significant constitutional issues that have to be resolved.

I heard Madam Chairwoman indicate in the beginning of the hearing that this is commercial speech. However, as you will hear from Mr. Destro, commercial speech still has First Amendment protections.

Aside from First Amendment protections, you have to worry about classifications under the equal protection clause of the Fifth Amendment that is applicable to the Federal Government. There are significant drafting issues that have to be addressed in coming up with a resolution to this.

Mr. KENNEDY. If I might just respond briefly, Madam Chairwoman, the reality is that the Supreme Court has decided on a number of different occasions that the government not only has a right but a responsibility to protect the American public, so I am not so sure that it is appropriate that all of us become instant experts on the Constitution and take the notion that we have that somehow we don't have the right to do that as a—as the basis under which we then take no action.

It seems to me that as people that are in charge of Alcohol, Firearms and Tobacco that it would be your job to throw something out there and let—if the Supreme Court wants to knock it down, fine, let them try, but let's at least have a fight. Let's not get so tonguetied that we can't even come up with the necessary language that at least attempts to get the job done, and then let us have it out. Let us have it out.

If we have to fight the Supreme Court in the Congress of the United States, let us have a try at it, but you don't have to worry about that fight.

Thank you, Madam Chairwoman.

Chairwoman SCHROEDER. Sounds good. All right, Senator Pressler. We are very honored to have you here. Thank you very much for coming over and the floor is yours if you have any questions.

Senator PRESSLER. Thank you very much. I shall be very brief. Thank you very much for allowing me to say just a few words.

I think it has probably all been said, but it seems that our Indian reservations are being used as targets for dumping trash. Just last week I spent much of the week working against a proposal, a very ingenious proposal to use Indian trust land by a large trash company to dump out of State trash.

Also, proposals to expand gambling on Indian reservations, and last year we had a battle over naming a tobacco product over an Indian reservation. Now we find ourselves fighting a proposal to have alcohol named after a spiritual and war leader of the Sioux people.

I think the whole attitude toward Indians has to change in the United States. There is a subliminal thing. Tribes are a dumping place for trash. They are a place for gambling. They are not a place for industrial development, real jobs. They are not a place for intel-

lectual development. They are a place to—that our culture would say is for dumping trash, for naming alcohol or tobacco products, or for gambling, and that is increasingly a trend. And I work closely with the tribal leaders and the people, the Indian people in my State, Indians and whites.

We have the year of reconciliation in South Dakota. It has passed the Congress. Now it is the national Year of Reconciliation to try and have better race relations. We talk about race relations in the United States. The whole Los Angeles thing brings all that to mind, but in my State the big issue is race relations between Indians and whites, and I just saw a movie, "Incident at Oglala," which some may agree with and some may not. It will be a controversial account of some events that occurred in South Dakota in the early 1970's, but the point is we have an increasing awareness of race relations in our country and certainly this whole subculture, the whole series of things that have gone on in the last two or three years.

So it is very appropriate that we should raise our voices in opposition and, Madam Chairwoman, I do have a statement. I will put it in the record because I can tell from the fine remarks that have been made that many of these subjects have been covered.

I talk of the nine Indian reservations in South Dakota with a population of 50,000 people. And, during my time as a Congressman and Senator since 1974, I have always had one or two staff members working full-time on relations with our Indian people on tribal matters and education and the colleges. I think it was here in this room that we passed the Tribal College—Tribal Community College Act in 1975, and we do have community colleges in South Dakota on some of the reservations, Santa Calesca and others, but the problems on those reservations are just enormous. They are similar to the problems our large inner cities are experiencing and we hear of the much reported inner-city problems, of crime, infant mortality. I believe I might be corrected here, but I believe the poorest county in the United States is the county in which the Oglala Sioux Tribe exists and I am sure Michael Her Many Horses could confirm that, but I believe that is a correct statement.

So we do have immense problems of poverty, but more importantly we have problems of attitude and problems of the subculture, of what we think of the Indian people, what they think of us, what we say, what we name things, where we dump our garbage, where we do our gambling.

I think it is a very serious trend which would be very demoralizing, I would think. We also have an enormous number of alcohol-related homicidal deaths. The suicide rate is double, the rate of Fetal Alcohol Syndrome is up 20 times the non-Indian rate. Indeed, it is almost worse than many Third World countries. As many as 17 percent of young Indian adults have attempted suicide. While drinking among white youth begins to decline after 22, there is no evidence of comparable decline for young American Indians and so forth.

So, Madam Chairwoman, I have several letters here that show I have taken several steps to fight this already. I have contacted company officials asking they stop marketing the Crazy Horse malt liquor. I have challenged the company to dedicate any profit to al-

cohol treatment programs on Indian reservations. I have asked the Bureau of Alcohol, Tobacco and Firearms to deny the label used. There have been some adjustments but still it is being used.

But more importantly than any of this is the continuing—— whether it was the cigarette thing last year, the garbage thing that has gone on and on, the gambling thing, this alcohol thing, there seems to be a current in our thinking, in our culture that we can do this, that this is—and we don't realize how demoralizing this is to young Indian women and men growing up.

Madam Chairwoman, I thank you very much and I ask unanimous consent to place my statement in the record.

Chairwoman SCHROEDER. Without objection, we would be happy to.

[The information follows:]

[illegible]

United States Senate

COMMITTEE ON SMALL BUSINESS

WASHINGTON, DC 20510-6350

April 20, 1992

Mr. John Ferolito, President
Hornell
4501 Glenwood Road
Brooklyn, NY 11203

Dear Mr. Ferolito:

I recently learned that Hornell is marketing a malt liquor product sold under the brand name of "Crazy Horse." I object to your using this name to market an alcoholic beverage and ask that you select a different name for the beverage.

I am troubled by the fact that you apparently failed to consult Indian leaders before naming and marketing your product. As the senior U.S. Senator from South Dakota, I represent a large Indian population. Throughout my tenure in the Senate, I have attempted to resolve conflicts between Indians and non-Indians. Most recently, I cosponsored a Senate resolution designating 1992 as the Year of Reconciliation between Indians and non-Indians. Your actions and inactions deteriorate the relationship between non-Indians and Indians and diminish the goals of the Year of Reconciliation.

Crazy Horse was a Native American spiritual leader and war hero. He is an important part of the Indian heritage. Any defamation of this hero is an insult to Indian culture.

There are nine Indian reservations in South Dakota. Unemployment is high, crime is increasing, and alcohol abuse is out of control. Most disturbing is the rapid increase of fetal alcohol syndrome. These are complicated problems and there are no easy solutions. I encourage you to travel to South Dakota to tour some of the reservations and to meet with Indian leaders. I am confident you will then agree that marketing "Crazy Horse" malt liquor would send the wrong message to young people. It is an insult to all Indian people.

In conclusion, I again stress my advice that you change the name of your product. Alternatively, I suggest you donate any profits from the sale of this product to alcohol treatment programs on reservations.

Sincerely,

Larry Pressler

Larry Pressler
United States Senator

PREPARED STATEMENT OF HON. LARRY PRESSLER, A U.S. SENATOR IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. PRESSLER. Chairwoman Schroeder, Surgeon General Novello, Chairman Bourland and others, I wish to commend your efforts to cease the marketing of "Crazy Horse" malt liquor and am pleased to join you this morning. Most significant, I believe this provides an opportunity to address some very important issues facing the Indian population.

As we all know, Hornell Brewing Company has been marketing a new malt liquor product under the name of "Crazy Horse." This is an insult to all Indian people. Crazy Horse was a spiritual leader and a war hero. Defamation of his name is inexcusable. I have joined in asking that Hornell Brewing stop marketing this product.

Last month, Surgeon General Novello traveled to South Dakota to underscore her opposition to "Crazy Horse" malt liquor. I joined in her call to the company to stop selling this product. In addition, I challenged company officials to dedicate any profits from the sale of "Crazy Horse" to alcohol treatment for Indians. I would like to submit a copy of my letter for the record and again state my strong opposition to the marketing of this product.

There are nine Indian reservations in South Dakota, with a population of 50,000. The problems on reservations are similar to those that large inner cities are experiencing. The rates of unemployment are among the highest in the nation, crime is increasing, infant mortality rates are deplorable, income is below the poverty level, the rate of Fetal Alcohol Syndrome is skyrocketing, and the traditional Indian family continues to deteriorate. These are complicated problems that have not happened overnight. I do not intend to imply that there is an easy or immediate solution to these tragic problems. Nor am I here with a list of solutions. However, I can say that marketing a product under the name of any Indian war hero and spiritual leader will not contribute to any solution.

It is important that we look at some startling statistics presented by the Surgeon General when she traveled to South Dakota. Many Indian nations suffer from a rate of alcohol-related deaths which is triple that experienced by non-Indians, the rate of alcohol-related homicidal deaths is double what occurs in the rest of the population, the suicide rate is double, and the rate of Fetal Alcohol Syndrome is up to twenty times the non-Indian rate. As many as seventeen percent of young Indian adults have attempted suicide. While drinking among white youth begins to decline after twenty-two years of age, there is no evidence of a comparable decline for young American Indians.

Despire these sobering statistics, one also must recognize that many tribes are coming to grips with these problems and are seeking solutions. For example, one tribe in South Dakota has begun construction of an alcohol treatment center. We must not allow these positive efforts to be eroded by a greedy alcohol distributor.

Again, thank you for holding this hearing.

Chairwoman SCHROEDER. I, too, want to thank the panel. As an urban person, I thank you for pointing out how you think this is geared to Native American youth in the urban areas. We see many people in Denver from the Rosebud Reservation and they feel alienated. And so you throw this out on the market and you think, terrific, this is how you stay in touch with your culture, which is exactly the wrong message.

It is not what you would want conveyed. My understanding, too, is that there is the equivalent of a—the alcohol in a six-pack of beer in this; is that correct, Mr. Earle?

Mr. EARLE. Yes, it is 5.8 percent alcohol by volume which probably equals out to a little more than a six-pack of alcohol by volume. [Corrected as follows.] Crazy Horse is 5.8 percent alcohol by volume which is roughly equivalent to 4 and ½ cans of regular strength beer.

Chairwoman SCHROEDER. More than a six-pack and that doesn't say anything about that on here. The Surgeon General I know wants to speak to this.

Dr. NOVELLO. Madam Chair, when Mr. Kennedy was speaking, he had asked what else is there that can we look into. It is the

issue that, since 1935 in this country, we do not label malt liquor or beer, because when the law was written in 1935, it was thought that the labeling of alcohol products will entice the people to drink.

Chairwoman SCHROEDER. So Mr. Earle, doesn't this look like it is geared to binge drinking?

Mr. EARLE. You could say that. I think the malt liquor industry,—through these high-proof products has exploited that. This is the area that is probably the fastest growing, the high strength beers. They have gone from containers that originally started out at eight ounces to those that are now 40 ounces.

Limiting the package size is beyond our control but this is obviously a market that is attractive to these companies.

Chairwoman SCHROEDER. The other thing that puzzles me is I think you are right, if we target it so that you couldn't do living or dead. Right now you couldn't name a beer after Jesse Jackson but you could after Martin Luther King. If we change that, then they will move to something else, I suppose, that also would be targeting young people.

I am concerned that we are, at the Federal level, putting intense pressure on States not to sell to kids below 21, and yet we are allowing messages to go out to make them want to do anything they can to get ahold of it, and we also know that at age 22, as you well pointed out, in most parts of the population, drinking tapers off.

So it seems to me that advertisers have got to get their message out and get them hooked before 21, 22, when they look at it in a little different light. So why couldn't we, in the name of health and welfare of the younger part of our population, isn't there something we can do on that basis rather than just looking on—I mean, I think this is very important to do, but the cultural targeting, too . . .

Mr. EARLE. Is that a question for me?

Chairwoman SCHROEDER. Yes. Doesn't it deal with health or do you have any——

Mr. EARLE. The Federal Alcohol Administration Act, is a broad umbrella covering the whole country and in that sense it provides general guidance and general rules under which companies and industry operate, including how they have to advertise and label.

But the 21st Amendment to the Constitution does defer to the States a much broader range of opportunities to regulate and to be much more specific in the way they approve and disapprove products.

Some States have banned this product because they have the power to do that where we do not. So that may be a way to approach it.

Chairwoman SCHROEDER. Did you have something you wanted to add, Mr. Her Many Horses?

Mr. HER MANY HORSES. Yes. Mr. Earle and Mr. Manfreda are approaching this very technically and it has been our experience, and Mr. Bourland will probably back me up on this, but if when we deal with the Fed, when we talk about interpretation, there are some attorneys over at Justice and Interior that take very broad interpretation and view of certain laws and then leave it to our shoulders to prove them wrong.

Why can't we apply that principle they apply to us to these people who are doing this Crazy Horse business?

Thank you.

Chairwoman SCHROEDER. We are from the Federal Government. We are here to help, right? Well, I would want to thank everybody on the panel for being terse and very direct and very clear, and I think as you saw, we would like very much to find something this committee can do to try and help with this problem.

Thank you very, very much for reclaiming a very proud heritage and not letting it be commercialized for the very wrong reasons that we think it might be being commercialized.

Thank you again.

The next panel we have this morning is Floyd Red Crow Westerman, Actor; Elder, Sisseton-Wahpeton Tribe, Dakota Sioux Nation; Jason K. Jones, from the Oglala Sioux and San Carlos Apache Tribes, accompanied by Vivian Juan, Member, Board of Trustees, United National Indian Tribal Youth, Inc.; Eva L. Petoskey, an Evaluation Coordinator from the First American Prevention Center, Red Cliff Band of Lake Superior Chippewa; Robert A. Destro, J.D., Associate Professor of Law, Catholic University of America.

We thank you all for waiting patiently. We are pleased to have you here this morning and what we will do is we will put all of your testimony exactly as it is in the record and feel free to summarize because, as you can tell, this is a panel that likes to get involved in the give and take.

Mr. Westerman, we are very honored that you would be here. You have been a great moving symbol to all of us and my guess is part of the appeal of the wonderful things you have done is making the Native American culture one of the things we are all learning more about.

So we are glad that you are here speaking out on this issue and the floor is now yours.

STATEMENT OF FLOYD RED CROW WESTERMAN, ACTOR; ELDER, SISSETON-WAHPETON TRIBE, DAKOTA SIOUX NATION, LOS ANGELES, CA

Mr. WESTERMAN. Thank you. I would like to begin by saying that I am honored to be able to speak on behalf of my people regarding this. Some of what you have already said—discussed, I will not try to add to, but only agree with some of what was said, especially with what Mr. Walsh said.

I would like to start out with, if it were named George Washington malt liquor, I think you would have the statute changed immediately. Maybe you should call it Crazy White Man Malt Liquor, then we will get more in tuned with how we feel about it. Reverse the thinking and then you begin to understand how we feel.

I am also national co-chairman of a Coalition Against Racism in Sports. We are now thinking about broadening our attack on products that are named after cultures and peoples. I think this is an indication of society's mentality to try to revert back to a frontier mentality, use the product, using frontier images, using the John Wayne image, extending our society into that thinking just as it

did with the Gulf War, as calling in the lands behind Iraq Indian territory.

It is a mentality that we are dealing with. I think these are the kind of things that the society of America has failed to understand about cultures, especially the one that has been here 50 years now.

As having an opportunity to play Ten Bears in the movie, "Dances with Wolves," I have studied many times that role over and over. What it means as a leader today, it would be the same meaning as being a leader of yesterday at the time of Ten Bears.

Crazy Horse was not only a great war leader, he was a spiritual man. That is why his name was named—Crazy. It was in English interpreted to mean every great power, of great power and thinking. So the English could not interpret that any better than to call it crazy. So I think these are the kind of mentalities we are faced with daily.

If we were to change the name of sports to Pittsburgh Negroes and New Jersey Jews, you wouldn't use that either. It is across the board. It is a mentality. So I think we can broaden the wording of any statute to make it law, to govern people and protect people's images and their culture and the thinking of people in this society.

We have to approach it through schools, through products, where people walk in daily, such as McDonald's hamburgers. We have to inform people through these doors where people and children walk through, through television. The media and television are so powerful. They say in an Indian newspaper we have, in the Lakota Times, they say, buying a TV doesn't make children violent; turning it off does. I think this is the kind of effect TV has on children.

So I think, if we can reach the children through this television media, just as I was part of a CNN show, Ted Turner's "Captain Planet and the Planeteers," I am one of the characters in that where we teach—my character was to teach about the sacredness of the tree. I think America is missing the Indian point of view on all levels.

Since "Dances with Wolves," I have seen many Americans come up with that curiosity: "What is the Indian point of view?" We have teachings that are 5,000 years old and the one I want to bring up today is the teaching that whatever decision you make, it should be a decision that will be good for seven generations.

If you apply this thinking in Congress in every decision you make, I think we would have a better world for our youth and the future generations. I think that is where Congress and leaders of this country are missing out. They have forgotten to look into the people who were here before they were here.

The land was pure, the air was pure, and consequently the children were pure. We have a responsibility as a society and leaders of this society to teach those children but, more importantly, to protect them. Alcohol is one of the most devastating pollutants in this society, not only to the children, but to the leaders who sit in this Congress and Senate and vote.

Many Congressmen and Senators after lunch find themselves voting on war issues with a mentality after having been influenced after a lunch of many drinks. I think these are the kind of things that we have to do—we are dealing with as a people, the pollutant of alcohol in a society.

We have a responsibility to our youth and to society. That responsibility is to make decisions that are going to stand and be good for seven-generations.

Thank you very much.

Chairwoman SCHROEDER. Thank you, Mr. Westerman. Your seven-generation rule I think is one that is very eloquent.

Mr. Jones, would you mind if we moved to Ms. Petoskey. It seems that she has someone accompanying her named Rose who is getting a little impatient with the congressional system. Rose, we welcome you too. It is very nice to have you.

STATEMENT OF EVA L. PETOSKEY, M.S., EVALUATION COORDINATOR, FIRST AMERICAN PREVENTION CENTER, RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA, RED CLIFF, WI

Ms. PETOSKEY. It is an honor to be here, honored to be invited to speak on this issue. I am for the most part going to read my statement since I spent some time preparing it.

My name is Eva Petoskey and I work for the First American Prevention Center which is a tribally chartered organization of the Red Cliff Band of Lake Superior Chippewa located in Red Cliff, Wisconsin, and this is my daughter, Rose.

I am an Ottawa Indian from Michigan and a member of the Grand Tribes Band of Ottawa and Chippewa Indians, and I think I will just read what I have here.

Chairwoman SCHROEDER. You have phenomenal concentration powers.

Ms. PETOSKEY. Rose goes to a lot of meetings. She has been to Washington about five times in a few years.

Tribal value, culture, and symbols are protective factors that strengthen individuals, families, and communities and promote drug-free life styles.

The use of American Indian symbols and respected historic leaders to market alcohol is working against the efforts of tribal parents, elders and leaders to address the problem of substance abuse. Symbols express and represent meaning. Meaning helps provide purpose and understanding in the lives of human beings. Indeed, to live without symbols is to exist—is to experience existence far short of its full meaning.

Many American Indian youth find themselves in a world with few positive symbols to provide purpose and understanding in their lives. This situation is a result of persistent and deep social, cultural, and economic problems of Indian life in the United States.

Indian youths suffer severely from such substance abuse related problems as poverty, poor school adjustment, and failure, unemployment, increased morbidity and mortality, lack of opportunity, and family breakdown.

Three factors have been identified as especially important risk factors associated with substance abuse among Indian youth. The first is a sense of cultural dislocation or lack of integration into either a traditional Indian or modern American life. A study done by Oetting and Beauvias observed the lowest rates of substance abuse among Indian youth who expressed an ability to adapt comfortably to both Indian and non-Indian values.

In another study, May found evidence indicating that youth from tribes in which cultural identification was strong were less apt to abuse substances. Clearly, the involvement in Indian culture would appear to be a protective factor.

Second, in some Indian communities there is a lack of clear-cut sanctions against alcohol. I would like to emphasize the word some. I believe that it is an accurate emphasis. Nationwide, youth growing up in an environment in which substance abuse among adults is normative may not regard it as deviant, but as a sign of adulthood.

Third, a number of researchers on Native American youth have found strong peer group support for drug use, which has also been shown to be an important, if not primary, influence on drug use among American youth in general.

I am here to address you today as an Indian woman, a mother, and an educator who has spent the past 14 years in the substance abuse prevention field.

I am also here on behalf of the First American Prevention Center, a tribally chartered organization located on the Red Cliff Indian organization in Wisconsin. The center's goal is to work with Indian tribes and organizations to develop and to strengthen their local substance abuse prevention efforts.

The center offers training, curriculum, planning, and evaluation services. Based on the research cited and our personal experience, the center's staff in consultation with tribal elders has developed a culturally based substance abuse prevention curriculum for Indian students in grades K through 12. Since 1984, the center has worked with over 80 schools and communities to implement the program.

Our initial evaluation findings demonstrate that a culturally based curriculum can have a positive effect on the self-esteem of Indian children. In a study conducted by the center in 1988, students receiving the curriculum demonstrated a significant increase in self-esteem while students in a comparison school who did not receive the curriculum showed a statistically significant decrease in self-esteem scores.

Many Indian people like myself have committed their lives to creating a healthy environment for our children to grow up in. We have come to recognize the importance of our tribal values, teachings and symbols as protective factors that strengthen our children and communities. Much of the real work in this area has been done at the family and community level without funds or projects.

Efforts to use Indian symbols and the name of Crazy Horse to market alcohol are damaging and contrary to the years of hard work by Indian parents, grandparents, tribal leaders and elders and substance abuse program staff.

To see the impact of this marketing strategy from an Indian perspective, take a moment to think about someone you admire, a symbol that has meaning to you and a value you believe in. Now, think about how you would feel seeing that image—seeing the images that give purpose and understanding to you and your family on a malt liquor bottle.

In closing, I would like to share a story with you that we use in our culturally based curriculum. Many years ago among the Anishinaabe, a word that we use in our language, the Ottawa and

Chippewa language for ourselves, there was an old woman who was well over 100 years old. Among the Anishinaabe, then as now, the visions of elders were listened to as visions of things to come. Many, many years ago in her visions, her dreams, this woman saw the great island of the Anishinaabe, the continent of North America, and flowing through this land was a great river. This river was the river of alcohol and drugs. In her vision, the old woman saw many Indian people falling, excuse me, into and drowning in this river. When the old woman spoke of her vision, many people heard of the sad things to come, of the deaths of the Anishinaabe, yet they continued to use alcohol and drugs. Today this river is still flowing. The vision of the old woman was a great and true vision. How many more Anishinaabe will drown in it?

For those of us working to strengthen our communities, the answer is straightforward. We don't want any more of our children and family members to drown in the river of alcohol and drugs. We extend this dream for a healthy environment to all children and families living in this country. As one step in the right direction, we ask you to work with us in putting an end to the use of Indian symbols and culture to market alcohol.

Chairwoman SCHROEDER. Thank you very, very much. We have, Rose, coming down for you a bib that says "Future President of the United States" because we think with your presence you are on your way. So when they come with a package, you will be all ready.

[Prepared statement of Eva L. Petoskey, M.S., follows:]

PREPARED STATEMENT OF EVA L. PETOSKEY, M.S., EVALUATION COORDINATOR, FIRST AMERICAN PREVENTION CENTER, RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA, RED CLIFF, WI

TRIBAL VALUES, CULTURE, AND SYMBOLS, ARE PROTECTIVE FACTORS THAT STRENGTHEN INDIVIDUALS, FAMILIES, AND COMMUNITIES AND PROMOTE DRUG FREE LIFESTYLES

THE USE OF AMERICAN INDIAN SYMBOLS AND RESPECTED HISTORIC LEADERS TO MARKET ALCOHOL IS WORKING AGAINST THE EFFORTS OF TRIBAL PARENTS, ELDERS, AND LEADERS TO ADDRESS THE PROBLEM OF SUBSTANCE ABUSE

"Symbols express and represent meaning. Meaning helps provide purpose and understanding in the lives of human beings. Indeed to live without symbols is to experience existence far short or its full meaning." (1)

Many American Indian youth find themselves in world with few positive symbols to provide purpose and understanding in their lives. This situation is a result of the persistent and deep sociocultural and economic problems of Indian life in the United States. Indian youth suffer severely from such substance abuse related problems as poverty, poor school adjustment and failure, unemployment, increased morbidity and mortality, lack of opportunity, and family breakdown.

Three factors have been identified as being especially important risk factors associated with substance abuse among Indian youth.

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The first is a sense of cultural dislocation or lack of integration into either traditional Indian or modern American life. Oetting and Beauvias (1982) observed the lowest rates of substance abuse among Indian youth who expressed an ability to adapt comfortably to both Indian and non-Indian values. (2) May (1982) found evidence indicating that youth from Tribes in which cultural identification was strong were less apt to abuse substances. (3) Involvement in Indian culture would appear to be a protective factor.

Second, in some Indian communities there is a lack of clear-cut sanctions against alcohol use. Nationwide, youth growing up in an environment in which substance abuse among adults is normative, may not regard it as deviant but as a sign of adulthood.

Third, a number of researchers on Native American youth have found strong peer-group support for drug use, which has also been shown to be and important if not primary, influence on drug use among American youth in general. (4)

I'm here to address you today as an Indian woman, mother, and educator who has worked for the past 14 years in the substance abuse prevention field. I am also here on behalf of the First American Prevention Center a tribally chartered organization located on the Red Cliff Indian Reservation in Wisconsin. The Center's goal is to help Indian tribes and organizations develop and/or strengthen their local substance abuse prevention efforts. The Center offers training, curriculum, planning, and evaluation services.

Based on the research cited and our personal experiences, the Center staff, in consultation with tribal elders, has developed a culturally based substance abuse prevention curriculum for Indian students in grades K-12. Since 1984, the Center has worked with over 80 schools and communities to implement the program. Our initial evaluation findings demonstrate that a culturally based curriculum can have a positive effect of self-esteem of Indian children. In a study conducted by the Center in 1988, students receiving the curriculum demonstrated a statistically significant increase in self-esteem, while students in a comparison school (who did not receive the curriculum) showed a significant decrease in self-esteem scores. (5)

Many Indian people, like myself, have committed their lives to creating a healthy environment for our children to grow up in. We have come to recognize the importance of our tribal values, teachings, and symbols as protective factors that strengthen our children and communities. Much of the real work in this area has been done at the family and community level without funds or projects. Efforts to use Indian symbols and the name of a Crazy Horse to market alcohol are damaging and contrary to the years of hard work by Indian parents, grandparents, tribal leaders, elders, and substance abuse program staff.

To see the impact of this marketing strategy from an Indian perspective, take a moment to think about someone you admire, a symbol that has meaning to you, and a value you believe in, now think about how you would feel seeing the images, that give

purpose and understanding to you and your family, on a malt liquor bottle.

In closing I would like to share a story with you that we use in or culturally based curriculum.

"Many years ago among the Anishinaabe, (Chippewa and Ottawa people) there was an old women who was well over one hundred years old. Among the Anishinaabe then as now, the visions of elders were listened to as visions of things to come. Many, many years ago, in her visions, her dreams, this women saw the great island of the Anishinaabe, the continent of North America, and flowing through this land was a great river. This river was the river of alcohol and drugs. In her vision the old woman saw many Indian people falling into and drowning in this river. When the old women spoke of her vision many people heard of the sad things to come, of the deaths of the Anishinaabe, yet they continued to use alcohol and drugs. Today this river is still flowing. The vision of this old women was a great and true vision. How many more of the Anishinaabe will drown in it? (6)

For those of us working to strengthen our communities, our answer is straight forward. We don't want any more of our children and family members to drown in the river of alcohol and drugs! We extend this dream for a healthy environment to all children and families living in this country. As one step in the right direction, we ask you to work with us in putting an end to the use of Indian symbols and culture to market alcohol.

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Chairwoman SCHROEDER. Mr. Jones, thank you and we will turn the floor over to you.

STATEMENT OF JASON K. JONES, MEMBER, OGLALA SIOUX AND SAN CARLOS APACHE TRIBES, SAN CARLOS, AZ; ACCOMPANIED BY VIVIAN JUAN, MEMBER, BOARD OF TRUSTEES, UNITED NATIONAL INDIAN TRIBAL YOUTH, INC. (UNITY), OKLAHOMA CITY, OK

Mr. JONES. Good morning. My name is Jason Jones. I am a member of the Oglala Sioux and San Carlos Apache tribes. I reside in San Carlos, Arizona. I am very honored to be here on behalf of the Native American youth. I represent the youth at this time, and strongly disagree with the name Crazy Horse being used on an alcoholic beverage.

For one thing, I know Crazy Horse wasn't an alcoholic, but a great spiritual leader whom I looked to as one of the Native American heroes I read about. I am glad I know about Crazy Horse and what kind of life he had. I am young but what about the younger ones who have yet to learn about him? Will they look to Crazy Horse as a great spiritual leader or an alcoholic who would be proud to have his name be used for a malt liquor? How would one feel if there was a Martin Luther King, Junior malt liquor? How would one feel if there was a George Bush malt liquor?

It doesn't make sense. Well, neither does the Crazy Horse malt liquor. I used to drink, but I quit. I would rather teach the younger generation about the effects of alcohol. It is no fun when your best friends die of alcohol knowing that they won't be around anymore to talk to and I am glad I quit and found happiness through learning and practicing both sides of my culture. I am glad I understand the ceremonies that take place and I am glad to teach those who are willing to learn.

How will we feel when we see our younger children like this grow up? If we don't teach them about this Crazy Horse malt liquor and who Crazy Horse was, what kind of leader he was for our people, then that malt liquor will teach them and that is the only way they are going to learn about Crazy Horse.

I am currently involved in a youth organization called Youth Helping Youth. We are drug- and alcohol-free members. We try to create a better relationship between the youth and adults. We provide community services and promote drug- and alcohol-free activities. We encourage youth with alcohol problems to quit.

I am also involved with the United National Indian Tribal Youth, known as UNITY. I am glad I became good friends with George "Cricket" Shields, Harlan McKosato, J.R. Cook, George Thomas, all UNITY staff. They are the ones that made this trip an unforgettable experience, but I ask that you listen to what we have said and that you will help us out, help us change the name Crazy Horse malt liquor, because I would rather see the younger generation live than die. Although it is not being sold in my community, it still has an impact on our youth.

I would like to be identified as being a Native American with this eagle feather here. I don't want to be identified as being an

alcoholic by that bottle of malt liquor. This is my happiness here. This is what I feel that I would rather be identified as.

Help keep our people alive so we can continue to demonstrate our entertainment for you, such as pow-wows, sharing of our culture, and great movies like "Dances with Wolves".

Thank you.

Chairwoman SCHROEDER. Thank you, Mr. Jones. We, too, are glad that you have been able to overcome alcohol and I know you are a very big inspiration for other young people. Thank you for being here.

[Prepared statement of Jason K. Jones follows:]

PREPARED STATEMENT OF JASON K. JONES, MEMBER OGLALA SIOUX AND SAN CARLOS APACHE TRIBES, SAN CARLOS, AZ

Good morning madam Chairwoman and members of the committee.

Many of our youth on the San Carlos Apache Reservation drink. They drink because of peer pressure...everybody else is doing it... boredom at home...they want to be cool. Not only does it affect youth on my reservation, but others as well. Sometimes it results in death, poor self-esteem, and eventually leads them to being an alcoholic. Although the "Crazy Horse Malt Liquor" isn't being sold on my reservation, it still has some type of effect on youth, because I have heard the youth talk about this product. If we don't teach our youth about our culture and tradition, then the "Crazy Horse Malt Liquor" will. They will look at Crazy Horse as being an alcoholic.

They will never know the real Crazy Horse and what he did for our people. After talking to the Drug and Alcohol Program, I came to find out that at least seventy percent of a population of about ten thousand on our reservation have a problem with alcohol. Imagine what percent is made up of youth. I am currently in a youth organization called Youth Helping Youth. We try to create a better relationship between youth and adults, provide service to the community and drug and alcohol-free activities. We try to reach out to those who are troubled.

Although they may still be abusing drugs and alcohol, we still encourage them to help overcome their problem. I also was employed by the Tribe as a Peer Tutor for the San Carlos Apache Youth Home. Working with these students was very hard, knowing what kind of background they each had. I was glad I had the chance to work, because I know now how I can help my community.

About my views on the "Crazy Horse Malt Liquor". I strongly disagree with the use of Crazy Horse being used for a name on a liquor container. I know Crazy Horse was a great leader among the Sioux Tribes. How would you feel if the name "Martin Luther King Malt Liquor" came about? How about "George Bush Malt Liquor?" I'm sure everyone would be offended. That's how I feel about Crazy Horse being portrayed on a malt liquor. There is no respect for Native Americans, when we try to help ourselves, when we fight for what we believe is right. Please listen to us. I am willing to help my people in anyway I can. If I can be one of the people who helped change the name of the malt liquor, then I can go back to my community and teach the youth how we can make a difference if we keep believing and fighting for our rights. No one should judge another person by what they look like, but rather, how they know that person. If we work together, and help one another, then we both satisfy our needs. So please listen and hear me. Help me make a difference for me and my people.

Jason K. Jones

Chairwoman SCHROEDER. Mr. Destro, you are going to tell us how to do this. The floor is yours.

ROBERT A. DESTRO, J.D., ASSOCIATE PROFESSOR OF LAW, CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, DC

Mr. DESTRO. Thank you, Madam Chairwoman for inviting me here today.

Let me introduce myself for the record. I am Robert Destro. I am a professor at Catholic University Law School here in Washington where I teach a seminar on the First Amendment. I am Director of the Interdisciplinary Program in Law and Religion, have spent many years looking at issues not only of discrimination on the basis of race and national origin, but also issues related to disability and bioethics. All these issues sort of wrap into one in the subject area that we are talking about today.

During my six years on the Civil Rights Commission, I spent a considerable amount of time in Indian country, and I think I have some nodding acquaintance with the issues here. I don't purport to be an expert on alcoholism in Indian country, but what I do want to point out here at the risk of enraging my colleagues in the American Bar Association, is that the lawyer is brought in at the end of the day to do two things; to try to make sense out of what is going on, and as Mr. Her Many Horses said a little while ago, oftentimes technicalize that which is going on.

It seems to me that, if we really do have an appropriate concern for the First Amendment here, as well as an appropriate concern for the very real and devastating problems that exist, not only on the reservations but also in the central cities among many different ethnic groups, then I think this hearing sends us off in the wrong direction.

All the First Amendment really requires of us is to be very clear about what it is we are trying to do, and to make it clear—to a court. I understand that sometimes many people feel strongly—and I don't mean to disparage the symbolism that Mr. Westerman used—and I know that it seems like it takes seven generations to get a case all the way through the courts.

So it seems to me that what we need to do is to make very clear what it is we are after, and what—and how—we are going to try and accomplish it. As I listened to the testimony today, and read through the materials that were supplied to me, what became clear is that there were about five general issues and one major overarching issue involved here.

The first is the appropriation of cultural symbols. I should note that Sam Adams Beer will be banned if you change the rule. Second, there is the concern about alcoholism. Third, there is the historical neglect and duplicity with which the Federal Government has dealt with Native Americans. Fourth, there is control of advertising and advertisers.

On this point, let me note that there is a commercial out there that purports, I suppose, to sell shampoo. What they are really selling is sex. Advertising is the manipulation of the human mind and character. Pleasure, fantasy, and power are used regularly; you can

see it in any Acura commercial. The First Amendment wasn't really designed to deal with such issues, but if we keep the First Amendment in mind as we try and deal with the impact of such advertising, I think we can come up with some decent policy.

Surgeon General Novello mentioned the public health issue, but I think the overriding issue is self-restraint. And when I say this, I don't mean to be preachy, but Surgeon General Novello used a phrase which I wrote down, "that which is ethically appropriate". I believe that this is the component—even when we are talking about First Amendment issues—that we should be talking about: that which is "ethically appropriate". That term has been defined by one of the great minds in legal ethics, Professor Tom Shaffer of the Notre Dame Law School. He describes it as being a very simple concept. It is taking personal responsibility for your behavior.

Many times constitutional law discussions presume that issues of personal autonomy are to be set off against ethical discussions; as one being a control of the other, so to speak. In reality, that is not the way it is. Ethics and good constitutional law should go hand-in-hand. And, as we talk about advertising and the First Amendment today, I want to point out that advertising has its positive side. We look at the "Campaign for a Drug-free America," and the cultural targeting of symbols, that drugs are a new form of slavery, for example. These are very powerful messages, and demonstrate ways to use the advertising medium to give an anti-drug message.

We teach by word and deed in our TV commercials and in our shows. No one has really mentioned it here; we talked about advertising all day today. But we haven't really talked about the messages about alcoholism in TV shows. What is that message? That people drink like fish on TV shows. These are cultural issues too. But as soon as you say "First Amendment," you must contemplate a censor in the mind or office of the script writer, saying that it is not proper to have J.R. Ewing of "Dallas" fame having his fifth glass of scotch in today's re-runs.

All of the First Amendment police—myself included—would say you can't do that. And the reason that I take the "ethics" tack, rather than to take the more technical legal one, is to suggest that Congress is the target of the First Amendment. It says "Congress shall make no law." So, as Congress tries to make laws, the First Amendment itself demands that you be very, very precise about what it is you are trying to do. My experience on the Civil Rights Commission gave me a much better appreciation for the history of broken promises and neglect that sits right in the lap of this Congress and this government with respect to Native Americans.

The image conveyed by government policy with respect to Native Americans is astoundingly negative. The notion of a trust relationship is somewhat laughable. Let me give an example.

I went up to Wisconsin a few years ago, a place where I used to live, to represent the Commission in its efforts to look at the violence that has grown out of the treaty hunting and fishing rights issue. I couldn't get any of my colleagues to go with me, liberals or conservatives.

So, when we talk about issues such as these today, what I am concerned about here, from a First Amendment perspective, is that we not look at Crazy Horse Malt Liquor as a politically correct op-

portunity to give a meaningless affirmation to the troubles of Native Americans.

These are very real problems. They exist today. However, I have yet to see really resounding statements either from the leadership of the Congress, or the White House. A lot of what is said is more trendy than it is real.

It seems to me that the second major issue is: How does Congress teach a consistent ethical message with respect to public health? If you look in the four factors that I put on page four in my testimony—the Supreme Court's *Central Hudson* test, I have focused so far on number one, but the one that the Court is really interested in once we have defined the nature of the government interests, is: do restrictions on advertising really advance that interest? My question is this: What interest does this Congress have in regulating the name "Crazy Horse Malt Liquor"?

Is it the health interest? Is it the cultural appropriation interest?

I think this Committee has to be very, very clear about what it is trying to do. The more clear it is, the more support you are going to get from the American people. People do not support mushy policies. They support policies that are directly aimed at doing something.

So, as we talk about the First Amendment here, I can say, the First Amendment requires restraint. The First Amendment requires restraint of Congress first and foremost, but it also presupposes, and deToqueville wrote of this in *Democracy in America*, it also presupposes that those *not* bound by the First Amendment will be bound by their sense of ethics and morality.

When First Amendment issues come up, the usual talk is about, "oh, my gosh, there is going to be a chilling effect on speech." Well, that is precisely what we want in instances like this. We want people not to use names like Crazy Horse, we want people not to use names like Martin Luther King. We don't want people who sell Benetton clothes to use the sorrow of AIDS families as an eye-catcher. We don't want "Godfather's Pizza." We don't want any of the kinds of negative stereotyping that permeates American television and advertising.

But television is manipulation, and so is the nature of the advertising game. We must keep in mind that the point of advertising is to *sell*. That is not unconstitutional. In fact, that was one of the whole points of the Constitution's Commerce Clause to encourage free trade—selling and buying.

When I was on the Civil Rights Commission, we spent many hours talking about targeting minority communities to increase sales and the number of minority business entities. That is targeting minority communities, too. The question is: What are we targeting them with? Something good or something bad? We really need to distinguish between that which we consider truly bad, and that which we consider trivial, where Congress should have no role whatsoever.

Let me just close—and I will just take a second for this. I mentioned politically correct speech. It is a growing problem around the country. We all know it. The concern that I have about this hearing is that we must be very careful that we are not selective in our outrage.

I will use Congress as an example. I agree with the Native American community that "Crazy Horse Malt Liquor" is insulting and that the company should know better. But where was the outrage in Congress with respect to one of the most celebrated insults in recent history? Salman Rushdie insulted thousands of people in this country, and millions of people around the world, with his *Satanic Verses.* It too was a commercial venture, but it was a book, and the NEA material on Andres Serrano with the crucifix submerged in the urine.

Those are very important cultural and religious symbols too. Congress was silent, and a lot more divided with respect to those issues than I suspect it is with respect to this one. As a First Amendment specialist who studies both speech and religion issues, I am concerned about that selective outrage. It goes to the heart of the First Amendment issue. Thank you.

[Prepared statement of Robert A. Destro, J.D., follows:]

PREPARED STATEMENT OF ROBERT A. DESTRO, J.D., ASSOCIATE PROFESSOR OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA, WASHINGTON, DC

I would like to thank the Chair, and the Select Committee for the opportunity to share my views on today's topic: the impact of alcohol marketing on Native Americans. First, however, I would like to take this opportunity to introduce myself.

I am currently an Associate Professor of Law and Director of the Interdisciplinary Program in Law and Religion at the Columbus School of Law of the Catholic University of America. I teach Constitutional Law, a seminar on the First Amendment, Conflict of Laws, and two additional courses in which involve substantial constitutional questions: Professional Responsibility and Bioethics. I have spent most of my career dealing with civil rights issues related to religious liberty, discrimination on the basis of national origin and ethnicity, and bioethics. The perspective I bring to this hearing is influenced by my experience as a litigator and scholar in the field of First Amendment law, and by my service as a Commissioner on the United States Commission on Civil Rights from 1983-1989. My current writing and research is focused on First Amendment issues historical patterns of discrimination on the basis of religion and national origin and the manner in which discrimination is related to cultural assimilation.

During my tenure at the Commission, I served as the a member of the Commission's Subcommittee on the enforcement of the Indian Civil Rights Act (ICRA), and spent considerable time working on civil rights issues facing Native Americans, including issues under the Indian Child Welfare Act, treaty rights, and tribal court justice. I have travelled to Indian Country as a

representative of the Commission both for hearings, and to make clear the Commission's long-standing opposition to the bigotry, isolation, and neglect which so often plague the lives of Native Americans.

Let me start out by noting for the record what I consider my role to be this morning: bringing the topic into a *constitutional* focus. I will therefore focus my testimony on the following question:

> Assuming that alcohol labeling and marketing *has* an impact on Native American health and culture, what role can (or should) Congress play in 'confronting' the problems which may fairly be identified as arising from that activity?

I have limited the question in this manner because the Constitution does not concern itself which the manner in which private citizens "confront" this or any other topic relating to sensitive health, cultural and religious concerns. It is only when government decides to take action aimed at limiting the content of speech that the First Amendment comes into play. When the speech to be controlled is alleged to be directed at, or is alleged to be insenstive to the cultural or religious concerns of, specific sub-groups in society, the questions are far more complex.

The initial topic is arguably what the Supreme Court has termed "pure commercial speech which does 'no more than propose a commercial transaction'[1]. In this case, First Amendment analysis

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1. Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc. 425 U.S. 748, 762 (1976).

"is guided by the general principles identified in *Central Hudson Gas & Electric Corp. v. Public Utilities Comm'n of New York*, 447 U.S. 626, 637-38 (1985)."[2]

> Under *Central Hudson*, commercial speech receives a limited form of First Amendment protection so long as it concerns a lawful activity and is not misleading or fraudulent. Once it is determined that the First Amendment applies to the particular kind of commercial speech at issue, then the speech may be restricted only if the government's interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest.[3]

I will assume for present purposes that the advertisements which are the subject of this hearing neither attempt to falsify, deceive, or mislead the target market segment[4] (which is already forbidden by law), nor propose an illegal transaction.[5] The key consideration here is how to bring the commercial speech doctrine to bear on the advertising alcoholic beverages which allegedly does either of the following:

1) expropriates or otherwise utilizes as a marketing tool cultural symbols which are significant to specific ethnic or religious groups; or

2) "targets" a market-segment which is comprised of identifiable ethnic subgroups.

In order to even hazard a guess with respect to this question,

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2. Posadas de Puerto Rico Assoc. v. Tourism Co., 478 U.S. 328, 340 (1986) [hereafter Posadas de Puerto Rico Assoc.].

3. Id., quoting Central Hudson, 447 U.S. at 566.

4. *Compare, e.g.*, Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 638 (1985)

5. *See* Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 413 U.S. 376 (1973).

it will be necessary for the Select Committee to consider carefully each of the factors identified by the Supreme Court in *Central Hudson*. Since I have assumed at the outset that the advertisements are not otherwise illegal, the inquiry must focus on the following questions:

1) What is the *precise* nature of the government's interest in regulating the commercial speech in question?

2) Is that governmental interest a "substantial" one?

3) Do the restrictions directly advance the government's asserted interest?, and

4) Are the restrictions no more extensive than necessary to serve that interest?

Due to time and space limitations, I will limit my comments to the first question:

What is the *precise* nature of the government's interest in regulating the alcohol advertising in question?

This is the central issue of this hearing. From reading the materials supplied by the staff of the Committee, I assume that Native American health interests predominate, but are not the exclusive focus. Native American cultural and religious issues are of critical importance as well.

1. Health Interests

The federal interest in the health of the various Native American communities is unquestionably a strong and legitimate interest, and there is no question that the federal government and the States may regulate advertising of alcoholic beverages,

even to the point of banning such advertising altogether.[6] Nevertheless drinking is legal. Though it has caused considerable devastation among Native Americans, it has also caused considerable devastation among the population at large. What can or should the government do? Short of banning liquor advertising altogether, the question boils down to this: are attempts to regulate commercial speech targeted on Native American populations -- and, by extension, other populations in which alcohol abuse is a significant health problem -- justifiable under the First Amendment? This is not an easy question, for it goes to the heart of what the government must prove in order to win its case under *Central Hudson*, and, I believe, *Posadas de Puerto Rico*.[7] I will address this point in greater detail in my oral testimony.

2. Religious and Cultural Concerns

The federal interest in the preservation and protection of Native American cultural and religious traditions presents even greater difficulties under the First Amendment. There is no question that the federal interest in helping communities to retain a sense of cultural and religious identity is a legitimate one, but the First Amendment demands an even stronger cautionary

6. *See, e.g.*, Capital Broadcasting Co. v. Mitchell, 333 F. Supp. 582, 585 (D.C. 1971) (three-judge court), *summarily aff'd sub nom.* Capital Broadcasting Corp. v. Acting Attorney General, 405 U.S. 1000 (1972); Dunagin v. City of Oxford, Miss., 718 F. Supp. 738, 751 (5th Cir. 1983) (en banc).

7. I recognize as well that necessarily implicated here are the powers of the Native American Nations to self-government, and of the States under the Twenty-First Amendment. These topics are beyond the scope of my testimony today.

note here. This is so not only because regulating speech in order to preserve a specific community's sense of its own culture and religion is fraught with both vagueness and overbreadth concerns, but because regulation of the content of otherwise valid commercial speech in order to achieve what are essentially religious or cultural purposes goes to the heart of the First Amendment's Speech, Press and Religion Clauses. I will use my oral testimony to flesh out these concerns as well.

Thank you for your attention.

Chairwoman SCHROEDER. Thank you very much, and Ms. Juan has just arrived.

We wanted to thank you for coming. I understand she doesn't want to testify, but if you want to come up to the table, that is fine or whatever, but we are happy to have you here.

I also want to announce that the record will be kept open for two weeks if people have things that they want to put into it and now let me yield to the gentleman from South Dakota for questions.

Mr. JOHNSON. Madam Chairwoman, I don't have a lot of questions. I think that we have this—this panel has dealt with these issues in good fashion, and I think Professor Destro has very ably pointed out the complexities and difficulties of legislative responses, and I think that we may not be at that point quite yet.

I think that there is a great deal this committee can do in the nature of expressing outrage and unhappiness at the insulting nature of what the Hornell Brewing Company has been doing, and expressing support for a boycott, which certainly is a consumer response and a legitimate consumer response. I think that we need to be looking and pursuing a legislative response.

I don't think that we are there yet and I think such a response is going to be a substantial undertaking if it is truly going to be effective and constitutional at the same time. But I think that while we are in the course of pursuing legislative responses, perhaps at least holding hearings down the road, I think there are things that this committee can do in the short term to give its unequivocal support for the Native American community and those who are outraged at the naming of this beverage, and I would hope that before we conclude today, and I would leave it to the Chairwoman to determine the proper strategy; perhaps the committee could take up a resolution.

I have one that I have scribbled out, but perhaps the Chairwoman has another angle on that in that regard, but I do think it is important that we not simply conclude this hearing and walk away onto the next issue. I think that this committee needs to make a very strong statement on this issue.

Chairwoman SCHROEDER. Thank you, and I want to thank you because you have been working with the committee on these issues from the very beginning and you really have been one who has been here. I want everybody to know he has always been here.

I also want somebody to take this out to Rosa so she gets her bib that says she is going to be a future president.

Okay, Congressman Johnson, let's think about this a little bit. Mr. Jones, what I hear you saying is that images like Crazy Horse clearly are directed to appeal to people your age because you want to identify with leaders of your culture. Is that what you are saying?

Mr. JONES. Well, I think that we can learn a lot from our past, you know, where we came from in our culture, and teaching the youth about our ancestors helps us out and motivates us to be proud of who we are. And being a descendant of Crazy Horse, that helps me and I am proud to be of the Sioux Nation, Sioux tribes, and it is very important to us and these things, ceremonies, our ancestors, Crazy Horse, these are all things that mean a lot to us. Crazy Horse and Red Cloud, Sitting Bull, all of these are great

leaders among our people, and this is a part of history that we are talking about and, if I can at least take part in helping my people out in some way to help change the name of Crazy Horse on the malt liquor, then that is going to help me out and it is going to help our people out knowing that, you know.

We were fighting for what we believe in, what is right, and it is being disrespectful to us to have one of our great leaders being put on an alcoholic beverage and, later on, how are the non-Indians going to feel when the leaders of today, when their names are put on an alcoholic beverage?

Chairwoman SCHROEDER. Well, as we listened to what Mr. Westerman said about the seven-generation rule, we also, I think, as a general culture have been talking about different ethnic groups knowing their roots, that part of the way you get your wings is understanding your roots and that kind of roots you in that society. So my question, Mr. Destro, as we sit here pondering what we can do, we can do a resolution, as Congressman Johnson mentioned, but that is throwing a piece of paper at the brewer and my guess is they won't do too much about it.

I think it is better than doing nothing, but it doesn't really stop them. Can Congress—don't we have some right in commercial speech to protect the young?

Mr. DESTRO. Well, I mean, there is the protection of the young, and then there is—and I would first say against what? I mean, if it is against the alcoholism, there is certainly a lot that Congress can do. It can go so far, as I understand the law, as to ban the advertising of alcohol altogether.

Now, I don't think that they would—I don't think the Congress would do that. But when you get into areas of cultural sensitivity, the thing which is so interesting to me as a student of discrimination on the basis of national origin and the law of both employment and equal protection, is that American culture has for years attempted to extirpate vestiges of culture in other minority cultures that were every bit as strong as those under attack here.

If you look back into the history of the public schools, you will see that this was in fact one of the purposes of public education, to Americanize and to assimilate people. We are starting to reconsider a lot of those issues, but we are not willing to face the full implications of what such a reconsideration means. In the First Amendment terms, it means a lot.

I have my problems with multiculturism, but not so much because I think it is a bad idea. I think it is a good idea. The problem that I have is that it is coming from the government, and not from the people who really know the culture.

Chairwoman SCHROEDER. My problem is first I thought you weren't a lawyer. Now I know you are. I try to narrow a problem. You try to expand it. I want to know how we deal with this.

To me, I think there is a very clear-cut thing going on. As America experiences this rekindling of interest in their roots and we have wonderful things like "Dances with Wolves" that people get into, I think you could deduce that Crazy Horse malt liquor is geared to young people like Mr. Jones and people living in the cities who are studying Native American experience. I think it also goes to a stereotype that is very negative.

So you have two things. One going to the generic society and one going to the very specific Native American society.

Now, I still can't quite understand what you are saying to me. You are saying to me we have to be careful and we have to be cautious, we have to do this but then we have to look at the big picture. But we have—how can the Congress do something about this?

Couldn't we clearly say that you couldn't name it after—you can't name things after people dead or alive? Right?

Mr. DESTRO. You could. I mean, I have no doubt that you could do that.

I mean, the California Bar used to say, for example, that you are only allowed to have live people on law firm names, but firms fought that because they said, look, there is an image that we want to convey. There is no question that this brewer wants to convey an image, but the question is, what business is that of Congress?

Does it have a problem with the image expropriation of Crazy Horse? If so, that is one problem. Another problem is the targeting of inner-city and reservation youth with high-powered malt liquor. That is a different problem. No matter what you call the liquor, no matter if you take the name off, you are still not going to solve the problem of advertisers segmenting that market and going after it.

Some of the materials that were sent to me also use sex messages to sell malt liquor. You have the same problem; that is, you are still targeting the youth to sell a product.

Chairwoman SCHROEDER. Well, but you are not targeting it as directly or you are not targeting certain youth as directly by going to their roots.

Mr. DESTRO. I think that you are targeting them even more fundamentally when you use sex. You are talking about teenagers. You are talking about a time that everybody recognizes as one of raging hormones. The messages that are used to segment markets are very sophisticated marketing tools, and so it seems to me that if the issue is alcoholism, you have to separate out the alcohol from the device used to market it. They are related, and I know it is really hard to do, but I think that is why you have Committees like this one, and that is why you bring in people like me, or people with cultural sensitivity who can help you tease these issues out, and direct your approaches to each item singly. It seems to me that you are having a problem understanding what to do because the issues are not well defined and all are really very difficult issues.

When I was asked to give this testimony, I was asked "Can you do a 'blanket' approach?" You just can't. It takes a lot of time and a lot of effort, but I think that the effort is worth it because the problems are so significant.

Chairwoman SCHROEDER. But I think when you get back to the ethically appropriate, the real—I mean, unfortunately, if you are going to target sex, you are going to stop all advertising in America for everything. You know, I just have a feeling we are not going to be able to quite deal with that comprehensively, but I would think that we could target the appropriation of strong cultural symbols and say ethically we do not think that is appropriate for marketing things that are harmful.

Mr. DESTRO. I think that that is an even more difficult issue. Whose culture do you pick? I understand that there is a reason to

be outraged about this, but if you look—the culture has expropriated. The culture has expropriated any number of cultural symbols.

It is only going to be a couple of years before we start seeing Martin Luther King birthday sales. The culture expropriates that kind of stuff all the time. That it is done all the time but does not make it any less outrageous, however.

Chairwoman SCHROEDER. Sales are different than alcohol and tobacco. You are drawing a bright line between things that are harmful and things that lure you in that you shouldn't go over in debt at a sale because you are saving so much money, but it is not going to ruin your health and it is not going to cause Fetal Alcohol Syndrome babies and it is not going to do—surely we can draw that kind of distinguishing line, and Sam Adams, I don't think, is quite on target because my kids don't sit around and talk about the good old days of Sam Adams.

I don't even think they know who he is, sorry to say. I don't think it is quite the same culture. If it was Elvis Presley, maybe that would be different. But my guess is even then the family would sue. They probably own that name every way from the moon.

Mr. DESTRO. That is why I continually use the term expropriation. Basically you are taking something that doesn't belong to you and using it as a device to make money. The government does that with land. It is done all the time, but the government is supposed to pay for what it takes.

Now, it seems to me that there are ways that you can accomplish your goals that are very targeted. This depends, again, on what is it exactly that you want to do. If you want to solve the problem of name usage, then there are ways to do that. There are different ways in which you can experiment too, and I agree with Mr. Kennedy that you try, and then you see how the courts deal with it. If it doesn't work, you try something else. But the more directed it is at the outset, and the more closely you keep your mind on these four *Central Hudson* factors, the more likely it is you are going to win your case and begin to solve at least the part of the problem you have identified. Taking the name off is not going to solve the problem of targeting inner-city youth. Different kinds of messages will be used; the targets remain.

You have solved one problem, but it just crops up in another way. I think there are more direct ways you can deal with the problem.

Chairwoman SCHROEDER. I hear you but, as I say, we should only pay lawyers when they tell us how to do it.

Mr. DESTRO. That wasn't what I was told to do.

Chairwoman SCHROEDER. I hear you.

Mr. DESTRO. You raised Elvis Presley. Let me just leave with you a story.

You know that now that the Post Office has issued the Elvis Presley stamp that they are now contemplating a stamp to commemorate lawyers. The difficulty that designers have is the people are confused; they do not know what side to spit on. So, I mean, those are——

Chairwoman SCHROEDER. They are all there.

Mr. DESTRO. Those are the risks that we lawyers take whenever we show up.

Chairwoman SCHROEDER. Ms. Juan, we have got your testimony in the record. As a university Dean for Native American students, is there anything that you would like to add as to how we respond to Crazy Horse beer?

Ms. JUAN. On behalf of the United National Indian Tribal Youth, Incorporated, headquartered in Oklahoma City, Oklahoma, we would like to just express our concern on the impact of the label on American Indian and Alaskan Native youth.

Our young people two years ago gathered at a national conference where they identified 12 agenda items they will work towards by the year 2000, and the number one issue among the young people there was substance abuse, alcoholism, and these were students on and off the reservation, identifying their number one issue. They also shared that, in describing sobriety as an agenda item, the youth said, a conscious commitment must be made at all levels in our communities to adopt life-styles free of substance abuse by dealing only and aggressively with issues of denial, co-dependency and supply.

We cannot sustain the high cost and loss of useful lives of Native Americans and our young people. You ask them what are their concerns, what are the issues today. They will be up front and direct and many times we fail to ask them and we must look at ourselves as adults because we are a major factor in this whole process, and if we ask them for solutions, they will provide those solutions, and one is more role models.

We have several throughout the country. However, it comes down to whether a person chooses to lead a sober life with a college degree, with a GED, a career in the armed services or one person who is very knowledgeable about their culture and practices their traditions, but it is sobriety that is very critical and is what our young people look out for, and I would like to just support the testimony that was provided today and I have submitted written testimony.

[Prepared statement of Vivian Juan follows:]

PREPARED STATEMENT OF VIVIAN JUAN, MEMBER, BOARD OF TRUSTEES, UNITED NATIONAL INDIAN TRIBAL YOUTH, INC., (UNITY), OKLAHOMA CITY, OK

Greetings and good morning. My name is Vivian Juan, I am a member of the Tohono O'odham Nation, formerly Papago located in southern Arizona. I was raised in the village of New Fields in the district of Chukut Kuk, on the Tohono O'odham reservation located approximately forty-five miles west of Tucson, Arizona. Currently, I reside in Tucson where I am employed as the Assistant Dean for Native American Student Affairs at the University of Arizona. In addition, I have been an active member of the United National Indian Tribal Youth, Inc. for the past ten years.

With respect to the Sioux Nations that are represented here today, I too am here to testify against the use of the **CRAZY HORSE** label by the Ferolito, Vultaggio & Sons of the Hornell Brewing Co., a family owned Brooklyn company. I am aware that Crazy Horse is of Minneconjou ancestry, and some living relatives do currently reside on the Cheyenne River Sioux reservation in South Dakota. I am very much concerned about the negative impact this label and product will have on the most valuable resource of our Indian Nations - Our American Indian and Alaska Native Youth.

Since early contact with the Europeans, attempts have been made to "civilize" the Indians by forcing them to fit a mold that was so foreign to the traditions of our people. One example of this was the introduction of alcohol and spiritous liquor to our people. It is ironic that the Hornell Brewing Company selected one of the

most spiritual leaders of the Lakota Nation, who strongly opposed the use of intoxicating spirits, to be used as a drawing card for more young American Indian and Alaska Native lives to be taken due to the tragedies that occur when abusing alcohol. I have chosen to live a sober life as a result of witnessing these tradegies. Whether one resides on or off the reservation, does not shield one from the reprecussions of the abuse of alcohol, especially the destruction of families, individuals, and culture.

On May 15, 1992 a press release was sent out by Mr. Philip Brasher, an Associated Press reporter. In the release he wrote of an article published in the Journal of the American Medical Association, 1992 which released the results of a survey of 14,000 rural American Indian teenagers from 50 tribes in 15 states. According to Michael Resnick, a University of Minnesota researcher who helped conduct the study "This is the most devasted group of Adolescents in the United States." The study revealed that one in four boys is a problem drinker by the end of high school, and 11 percent of the youth surveyed reported extreme hopelessness. Nearly one in six Indian adolescents has attempted suicide and 20 percent of the teenagers surveyed for the Indian Health Service study describes their health as poor. Eleven percent of the Indian teenagers surveyed knew someone who had committed suicide and 17 percent had tried to take their own lives. Indian adolescents are more than twice as likely as non Indians to die from suicide. The study also revealed that Native American youth have a familiarity and intimacy with death and loss within families comparable to few

other young people in our society. On a more positive note, the study revealed that American Indian adolescents don't experience more health and mental problems than non-Indians until they reach the ninth grade. The solutions to improve these deplorable conditions are improved health services, better education, stronger cultural ties and the creation of mentor programs to give American Indian youth role models, that many of the youth don't have. Currently there are only 17 mental health workers for the nation's 400,000 American Indian and Alaska Native Youth and 200 are needed, said Senator Daniel Inouye, D-Hawaii, Chairman of the Senate Select Committee on Indian Affairs.

With such devastating up to date information, it is clear that two things are at the core of our youth and their survival as a strong and healthy people. For one, American Indian and Alaska Native youth do not need to be introduced to more alcohol gimmicks, otherwise our future as a proud people will be wiped out in its entirety, including our spirituality, physical well being, mental capabilities, and social interactions with all races of people. Secondly, the strong need for role models is very much dependent on the visibility of American Indian and Alaska Natives who choose to live a sober life in addition to having a college degree, a vocational certificate, a career in the armed services or being respected for ones practice and knowledge of ones culture.

Since time immemorial American Indian and Alaska Native heroes have emerged as a result of legends, famed battles, brave deeds and humble acts for the benefit of one's fellow man. Ta Sunke Witko

(Crazy Horse) is certainly one of the more famous and legendary heroes for all ages of the American Indian population. Also, people from all walks of life have admired and respected Crazy Horse for his deep sense of commitment to his people which was displayed by his acts of bravery and protection of the women and children in his band. Even up to his surrender to the federal government he was always cognizant of his decisions which were always based on "What is in the best interest of the people?" Crazy Horse deserves more respect and reverence than to be on a label of a malt liquor that contains alcohol, which happens to be the very product that has caused American Indians and Alaska Natives more pain and suffering for centuries untold.

The Higher Education Research Institute located in Las Angeles, CA. published an article by Patricia McNamara entitled Americans in U.S. Higher Education, 1984, that listed the top eleven pre-college barriers to academic achievement. At number four is "No Role Models." Although the study was done in 1984, I believe we can say a "limited number of role models exist." I am one of many individuals responsible for the retention of American Indian and Alaska Natives at the University of Arizona, a top research institution with an approximate student population of 35,000, with 552 of this number being American Indian and Alaska Natives from 40 different tribes. Although our Indian students meet the same criteria for admission to the university, like other students, some of our students come to our university with an alcohol and/or substance abuse problem. The only alternative for these students is

to drop out of school to undergo substance abuse treatment at a facility that can be paid for by the student's tribe, depending on the criteria. The only support available on most college campuses are prevention and educational programs, referrals to off campus support programs, or after care services in the form of counseling on campus, when and if the student completes an intensive treatment program off campus and at the student's expense. With the high at-risk numbers of American Indian and Alaska Native youth being recruited to attend a college and/or university of their choice, I am deeply concerned about the retention and graduation rates of our new college admits. Especially when the pool of some of our up and coming recruits are coming from such devastating reservation environments. The demand for positive role models living healthy livestyles is an absolute must!

With this in mind, I was very much enthused about being involved with United National Tribal Youth, Inc., hereafter known as UNITY. UNITY was incorporated in 1976 as a national non-profit (c) organization based Oklahoma City, Oklahoma. Its mission is to foster the spiritual, mental, physical and social development of Native youth and to build a strong unified and self reliant Native America through involvement of its youth. During its sixteen year history of which eleven were without federal funding, UNITY has offered a wide range of programs designed to further the leadership development of American Indian and Alaska Native youth. Included are seventeen national leadership conferences, a series of youth leadership seminars, an Earth Ambassadors project, and the

development of tribal/village/community youth councils have been coordinated by UNITY. There are a total of 27 established youth councils in sixteen states and from 23 different tribal groups. Also, another sixteen youth councils have recently been formed and are in various stages of development. In addition, UNITY has encouraged youth across the country to participate in the American Indian/Alaska Native GRAD NIGHT, which is a community based, chemical free all night party for high school graduates. The purpose is to allow for parents, students, tribes, and schools to work together for a common goal. Each year 1,000 Indians and Alsaka Natives die from injuries, approximately half of whom die from injuries sustained in motor vehicle mishaps. Injuries are the leading cause of death for American Indian and Alaska Native people between the ages of one and 44 years, and are the most preventable public health problem of all! Tragically, the average age of those who die is 27 years. An estimated 30,000 years of Native American life are prematurely lost each year from injuries, and 15,000 of them from transportation related accidents. And, almost 80,000 days are spent in hospitals by Native Americans requiring care for severe injuries. The Indian Health Service presents these startling statistics and has suggested injury prevention projects to combat this health problem. On April 29, 1986, the U.S. House Committee on Interior and Insular Affairs devoted its fifth and final hearing on H.R. 1156 legislation designed to curb alcohol and drug abuse among Indian youth. The hearing was designed to hear testimony from Indian youth themselves and UNITY arranged for twenty-six youth

witnesses from the UNITY conference to speak in support of this bill.

At UNITY's national conference in Denver in 1987, youth identified and prioritized their top ten concerns and began working toward finding solutions. Shortly thereafter, UNITY was selected by the Administration for Native Americans, an agency within the United States Department of Health and Human Services, to launch and coordinate the American Indian/Alaska Native Youth 2000 Campaign. A most significant outcome was the development of the national agenda for American Indian and Alaska Native Youth entitled "The Healing Generation's Journey to the year 2000." Individuals were trained to facilitate a process that allowed the students to identify the areas of strengths in their communities, the areas of concern, the barriers to resolving the problems, identify the resources available at the local state and national level. The agenda was created from the input of hundreds of Native youth and their supporters. The goal is to work towards improving the agenda items by the year 2000. As a result, the youth identified the following twelve interrelated agenda items; Sobriety, Service, Spirituality, Unity, Environment, Heritage, Sovereignty, Family, Individual, Education, Health, and Economy. The youth identified Sobriety as their number one issue in their deliberations. In describing Sobriety as an agenda item, the youth said "A conscious commitment must be made at all levels in our communities to adopt lifestyles free of substance abuse by dealing openly and aggressively with the issues of denial, co-dependency

and supply. We cannot sustain the high cost in loss of useful lives of Native Americans." In June 1990, six hundred American Indian and Alaska Native youth gathered in Oklahoma City, Oklahoma to develop the second phase of the national agenda which was the "Youth Strategies - To Implement the goals of the national agenda". The youth developed projects, programs, and services through a "think tank" process which involved developing a job chart to identify the tasks, persons responsible and a time frame of when to complete the task at hand. Throughout the country, American Indian and Alaska Native youth are implementing the goals of the national agenda, and are making a difference to improve their communties in order to lay a new foundation for a prosperous and healthy future.

In order for the goals of the National Agenda for American Indian and Alaska Native Youth, developed by our youth to become reality, several things must happen. They are the following:

a). Understanding of our plight must be supported by individuals from all walks of life, including breweries.

b). The U.S. Bureau of Alcohol, Tobacco and Firearms must do what is right and just by cancelling the Crazy Horse label approval.

c). A law be approved and enacted that will require the alcohol content be listed on the labels of liquor in all forms.

Thank you for the opportunity to testify. I know that the SPIRIT OF CRAZY HORSE will surely be honored by the removal of this label.

Chairwoman SCHROEDER. Thank you very much and you are absolutely right. It all comes down to a lot of self-responsibility, but advertisers have figured out how to hit all of our hot buttons to try and make us go against that and that is the real challenge.

Well, Congressman Johnson, we have a lot of work to do to figure out what we ought to do. A resolution is easy and we can do that and pass it around.

I would also, though, like to see us go toward trying to figure out what we can do vis-a-vis targeting of adolescent youth. I am fascinated that at the national level we have a policy trying to prevent the sales to adolescent youth but we also have laws that allow them to do everything they can to make the youth try to break the laws to get alcohol as adolescents.

So it seems to me we have got two countervailing policies at the Federal level and maybe we can figure out some way to get around that. We have a real challenge.

I thank very much this panel. You have been very, very helpful to us.

Again, the record is open for two weeks and, if people come forth with something that we can really chew on, we will be more than happy to have it. Thank you very much, and with that the hearing is adjourned.

[Whereupon, at 11:37 a.m., the select committee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

57-061 O - 92 - 4

PREPARED STATEMENT OF MIKE ANDERSON, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

The National Congress of American Indians (NCAI), the nation's oldest and largest intertribal organization, strongly condemns the use of the name "Crazy Horse" malt liquor by the Hornell Brewing Company, as marketed and distributed by Ferolito, Vultaggio & Sons of Brooklyn, New York. Michael J. Anderson, Executive Director of NCAI stated "By marketing the name "Crazy Horse" on its malt liquor bottles, the Ferolito Company desecrates the name and honor of Crazy Horse, a Minneconjou Sioux spiritual leader and warrior, who was undefeated in battle."

Anderson added, "Given the destructive effects of alcoholism on American Indian reservations and the crisis of Fetal Alcohol Syndrome, Brooklyn-based Ferolito & Sons demonstrates cruel insensitivity to American Indians. Mining the image of Crazy Horse for a few bucks shows that the greed exemplified by the search for Black Hills gold in the 1800's is alive and well in New York today." NCAI supports the efforts of the Cheyenne River Sioux Tribe, an NCAI member, in requesting that "Crazy Horse" malt liquor be renamed. NCAI's tribal members are outraged at so-called "ethnic targeting" efforts like the "Power Master" and "Crazy Horse" marketing campaigns.

PREPARED STATEMENT OF PATRICIA TAYLOR, DIRECTOR, ALCOHOL POLICIES PROJECT, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, WASHINGTON, DC

The Center for Science in the Public Interest (CSPI) is a non-profit consumer organization with over 250,000 members nationwide. Since 1980 we have advocated for policies to prevent alcohol-related problems. We work closely with many organizations around the country to improve alcohol policies.

We have published two reports, Marketing Booze to Blacks and Marketing Disease to Hispanics. In each of these reports, we describe the way in which the producers of alcoholic beverages target these communities -- using advertising images and themes directed to African Americans and Latinos; using specific advertising media such as billboards; and using specific types of products such as malt liquor. In the reports, we document the devastating health consequences alcohol is causing in these communities, even though both African Americans and Latinos drink less per capita than whites.

In August 1989 a press conference was held in Washington, D.C. to highlight the problems posed by malt liquor products. Participants included Dr. Walter L. Faggett, representing the National Medical Association; Peter Bell, executive director of the Institute on Black Chemical Abuse; Carlos Molina, president of the Latino Caucus of the American Public Health Association; and Michael Jacobson, executive director of CSPI. At the press conference we screened several ads for malt liquor that were then being aired and detailed the marketing practices that have become the subject of nationwide protests.

The attached letter was sent to Treasury Secretary Brady, asking that the alcohol content of malt liquor be restricted to 5 percent and that the producers stop targeting African Americans and Latinos with these products. A meeting was also held with representatives of the Treasury Departments Bureau of Alcohol, Tobacco and Firearms (BATF).

Despite these and other efforts to change the way alcoholic beverage producers are targeting African American and Latino communities, over the last three years we have witnessed the proliferation of new malt liquor products, a dramatic increase in advertising expenditures for them, advertising linking drinking malt liquor with drug use and featuring rap stars under the legal drinking age, heightened references to strength, the depiction of 40 oz. bottles as a single serving, and perhaps most disturbing, a dramatic increase in malt liquor sales.

Unfortunately, Crazy Horse malt liquor, the main subject of these hearings, is only the latest in a string of offensive malt liquor campaigns. We condemn Crazy Horse's manufacturer, for the way in which the company has appropriated a spiritual and cultural figure to promote a product responsible for so much devastation to Native Americans. We and many other organizations have filed complaints with BATF about this latest malt liquor product.

Across the country, community leaders, religious leaders, alcohol and drug abuse professionals, health and medical professionals, civil rights leaders, parents, and outraged citizens have protested Crazy Horse and other malt liquor products. During the campaign to halt PowerMaster, the enclosed letter was sent to BATF, requesting once again that they consider taking a broader approach to looking at malt liquor.

BATF's label review process is simply unequipped to handle the problems caused by a few producers who will go to any length to sell their products. It must be embarrassing for the agency to have to revoke label permits that have already been approved. As you know, the agency reviews tens of thousands of labels. That task is carried out in pursuit of its primary purpose -- to assure the orderly sale and distribution of alcoholic beverages and to collect alcohol excise taxes.

BATF's mission is not the protection of the public's health and welfare. A case-by-case review of labels, given how BATF reads their existing authority, doesn't work, even when the agency wants to do something.

A case in point is Olde English 800. For many years, despite consumer protests, the advertising slogan for that product was, "It's the Power." After many negotiations, the slogan has been revised to "It's the Tiger." This change was made to eliminate connotations of strength, which are outlawed under the Federal Alcohol Administration Act. To my mind, "It's the Tiger" still promotes the idea of power and the offending ad campaigns, conducted in both English and Spanish, remain virtually unchanged -- scantily clad women whose bodies are painted to be tiger-like, mounted on tigers or in similar poses. The changes that BATF has required simply don't address the way malt liquor products are promoted.

Another case is the recent decision by Heileman Brewing Co. to produce Colt 45 Premium, which has been approved by BATF. As you know, this is PowerMaster under a different name. Colt 45's advertising slogan is, "It Works Every Time."

Advertising for Mickey's, another malt liquor, references 8-balling, a term for using crack cocaine. The Wall Street Journal has covered malt liquor marketing extensively. The enclosed article by Alix Friedman describes some of the other messages in malt liquor ads. No other alcoholic beverage is advertised in this manner.

As Mr. Destro testified before the Select Committee, it is difficult to make a determination of what is offensive and to whom. And as Mrs. Schroeder pointed out, alcoholic beverages and tobacco are different than other products because of the harm they cause and the costs to our society. We propose that targeted marketing of malt liquor be restricted by regulating the product itself, essentially regulating the vehicle through which alcoholic beverage producers have waged their campaigns targeting Native Americans, African Americans, and Latinos of all ages.

As was pointed out in the hearings and as Dr. Novello has so eloquently and forcefully indicated in the past, alcoholic beverage producers also target other segments of the population. Of gravest concern is the targeting of advertising to young people. There are other federal agencies, notably the Federal Trade Commission (FTC), with the authority to do something about those ads. When she assumed office, FTC chair Janet Steiger publicized a staff investigation of alcoholic beverage advertising practices, especially ads aimed at kids, that she had launched. Unfortunately, almost three years later, the agency has nothing to show for those efforts.

In addition, there is legislation pending in Congress, H.R. 1443, the Sensible Advertising and Family Education Act, that would require rotating health and safety warnings in alcohol ads. We believe that this modest proposal, if enacted, would go a long way to changing the alcohol environment. There are certain cases, however, where even more needs to be done. Given its history, malt liquor is one of those cases.

We believe that the term malt liquor itself is misleading. It implies that the product contains liquor or, at a minimum, packs a bigger wallop than regular beer. It is a term that is used by the producers and is not defined in any federal regulation. We believe that the use of the term should not be allowed.

The second part of the proposal is to limit the amount of alcohol in products that have been called malt liquor by the industry to no more than 5%. Provisions could be made to exclude stouts and ales from this designation. This could be accomplished by either describing what characterizes malt liquor other than its high alcohol content and limiting the alcohol

content of those products to no more than 5% or by describing the characteristics of stouts and ales and other non-malt liquor products and approving their continued manufacture and distribution.

This proposal may seem dramatic. Isn't it as dramatic though, that citizens have to even consider organizing boycotts of products to have something done about Crazy Horse malt liquor (a threatened boycott of Colt 45 was partly responsible for the original withdrawal of PowerMaster), or that drinking is directly linked with illicit drug use in ads targeted to inner city residents, or that despite the pleas of the nation's leading doctor, the Surgeon General, and despite the pleas of parents and community leaders, even more malt liquor products like Crazy Horse are being introduced?

This proposal eliminates the need to define targeting, decide who gets to decide if they are targeted, and eliminates the need to decide when and how targeting is problematic. It also eliminates the bickering over the innuendo of various names, advertising campaigns, and other marketing activities that have been associated with these products. It also addresses the practice of targeting Native American, African American, and Latino communities with high alcohol content malt liquors. It is a very clear, unambiguous policy statement that in 1992, Congress is willing to examine the way in which alcoholic beverage products are made and sold based on their impact on the public health and safety and make a determination that malt liquor products should be regulated.

We appreciate this opportunity to express our views regarding malt liquor labeling and advertising practices.

August 23, 1989

Secretary Nicholas Brady
Treasury Department
15th & Pennsylvania Ave.
Washington, DC 20220

Dear Secretary Brady:

The undersigned organizations and individuals are deeply concerned about alcohol and other drug problems in America. We support policies to prevent them and urge you to help curb marketing practices that are exacerbating these problems.

Brewers are producing malt liquors and marketing them largely to Black and Latino men. These "high octane" beers average one-third more alcohol than standard beer. Drinkers can get four to six cans worth of alcohol in just three cans. Americans drink about 174 million gallons of malt liquor a year.

The enclosed sales brochure for one product, Pabst's Olde English 800, demonstrates clearly who companies are targeting and how. The brochure asserts that the product is "brewed for relatively high alcohol content (important to the Ethnic market!)."

Malt liquor advertising typically features Blacks and Latinos and includes images that are blatantly sexual or convey high alcohol content. Many Olde English 800 ads feature Black or Latino female models in sexually provocative poses. An ad for Midnight Dragon (made by United Beer) has a suggestively dressed female model saying, "I could suck on this all night." For years, ads for Colt 45, made by G. Heileman Brewing Co., have featured actor Billy Dee Williams; he said that the malt liquor "works every time" for seducing women (we understand that those ads are being changed). In addition to being insulting to women and others, the ads violate the Beer Institute's voluntary "Brewing Industry Advertising Guidelines" (#9 and #10).

To promote the higher alcohol content of malt liquors, product names often suggest strength and potency -- King Cobra, Bull, Colt 45, Turbo 1000, and Midnight Dragon. Indeed, the words "malt liquor" themselves suggest the alcohol content of liquor. Advertising for St. Ides malt liquor proclaims "#1 Strongest Malt," a claim that clearly violates regulations of the Bureau of Alcohol, Tobacco and Firearms (BATF) (27 CFR 7.54(c)), as well as the Beer Institute's advertising guidelines (#8).

Ads for Schlitz's Bull Malt Liquor indicate power by showing a bull crashing through a brick wall. Ads for Anheuser-Busch's King Cobra malt liquor state "The Bite That's Right." Those ads, containing implicit representations of alcoholic potency, may also be in violation of the law.

America's minorities are suffering greatly from alcohol-related problems. While fewer minorities drink than non-minorities, those who do drink, drink considerably more and are much likelier to suffer from alcohol-related health problems. According to the government's own statistics, compared to the general population:

* Black men have almost 4 times the rate of cancer of the esophagus (35 to 44 year olds have as much as 10 times the incidence);

* Black men have a 70 percent higher death rate from cirrhosis and other liver diseases (according to one study of urban 25-34 year-old men, Blacks are 10 times likelier to die of liver cirrhosis);

* Blacks have a several-fold increased risk of fetal alcohol syndrome for a given level of prenatal alcohol exposure;

* Mexican-born males have a 40 percent higher risk of death due to liver cirrhosis than White males;

* Alcohol-related deaths among Mexican-American men tend to occur at much earlier ages than among Whites;

* Mexican-American men in some areas of the country have more than double the rate of arrests for drunkenness and drunken-driving and suffer twice the rate of alcohol-related deaths.

Clearly, high-alcohol beers, and advertising linking those products to sexual success and alcoholic potency, are not what this nation needs.

America is waging a war on drugs, but all too often officials and the public forget that alcohol is our nation's leading drug problem. Many Americans who are addicted to illegal drugs are also addicted to alcohol. Alcohol is responsible for 100,000 deaths and $135 billion in economic costs each year. How can we wage, let alone win, a war on drugs if brewers market higher-alcohol products to the very people who are suffering disproportionately from alcohol and other drug problems?

Reducing demand for drugs is one important way we can reduce health problems associated with their use. We believe that the availability of high-alcohol beers and the advertising campaigns linking those products to sexual success and alcoholic strength are contributing to our nation's drug problem.

The undersigned organizations and individuals urge you to restrict the alcohol content of malt liquor to that of regular beer (no more than 5 percent alcohol by volume). BATF could accomplish this by establishing a standard of identity for "malt liquor." We also ask you to review all malt-liquor advertising and take appropriate legal action against those ads that violate the law. Finally, we ask you to urge malt-liquor producers to halt the blatant, sexually oriented advertising and stop targeting minority consumers.

We greatly appreciate your interest in this matter and look forward to hearing from you.

Sincerely,

American Council on Alcohol Problems
Black Congressional Monitor
Black Psychiatrists of Greater Washington Metropolitan Area
Center for Science in the Public Interest
Coalition Against Billboard Advertising of Alcohol & Tobacco
Congress of National Black Churches
Guadalupe (Calif.) Community Health Center
Harlem Consumer Education Council
Institute on Black Chemical Abuse
Latino Caucus of the American Public Health Association
Marin Institute
Mayor's Office (Washington, D.C.) on Latino Affairs
National African-American Consumer Education Organization
National Association of State Alcohol and Drug Abuse Directors
National Black Alcoholism Council
National Black Police Association
National Medical Association
National Prevention Network (state alcohol abuse prevention directors)
National Puerto Rican Coalition
PRIDE (National Parents' Resource Institute for Drug Education)
Puerto Rican Legal Defense & Education Fund, Inc.
Remove Intoxicated Drivers

Individuals

Omowale Amuleru-Marshall, Ph.D., M.P.H., director, Cork Institute on Black Alcohol and Other Drug Abuse

Ray Chavira, Probation Department, County of Los Angeles (Calif.)
Therman Evans, M.D., CIGNA, Philadelphia, Pa.
Gerardo Marin, Asso. Prof., U. of San Francisco
Elvira Velez, Clinical Asso., Florida Intern. Univ. (North Miami)

cc: Congressional Black Caucus
Congressional Hispanic Caucus
Select Committee on Narcotics

Please respond to the coordinator, Michael Jacobson, Ph.D., Executive Director, Center for Science in the Public Interest, 1501 16th St. NW, Washington, DC 20036

June 24, 1991

Secretary Nicholas Brady
Treasury Department
15th and Pennsylvania Ave., NW
Washington, DC 20220

Dear Secretary Brady:

The undersigned organizations and individuals are deeply concerned about alcohol and other drug problems in America. We support policies to prevent them and urge you to take immediate steps to help curb marketing practices that are exacerbating these problems.

For many years brewers have produced higher alcohol content malt products known as malt liquors. Frequently these "higher octane" beers are marketed heavily in African American and Latino communities. The G. Heileman Brewing Co. plans to market an even higher alcohol malt liquor. The product would have 31% more alcohol than other malt liquors such as Colt 45, which Heileman also manufactures.

To promote the higher alcohol content of malt liquors, product names often suggest strength and potency -- King Cobra, Bull, Colt 45, Turbo 100, Midnight Dragon and now, PowerMaster. Indeed, the words "malt liquor" themselves suggest the alcohol content of liquor. PowerMaster is the most recent entry in this category.

We were pleased to learn that the Bureau of Alcohol, Tobacco and Firearms (BATF) will be using its regulatory authority (27 CFR 7.54 (c)) to ask Heileman to eliminate the word "power" from its new brand. Unfortunately, this action came only on the heels of widespread protests. BATF should never have approved "PowerMaster" in the first place. We are also concerned about the host of other malt liquor brands also connoting strength and power in their names that still remain on the market.

While regular beer contains about 4.6 percent alcohol, malt liquor contains anywhere from twenty percent to one hundred percent more. That means that you can get drunk up to twice as fast. Alcohol use remains the most costly drug problem facing our nation today. Many Americans who are addicted to illegal drugs are also addicted to alcohol. How can we wage, let alone win, a war on drugs if brewers market higher alcohol content products to the very people who are suffering disproportionately from alcohol and other drug problems?

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We urge the Department of the Treasury to take the necessary steps to change the definition of malt liquor products so that they contain no more than 5 percent alcohol by volume. BATF could accomplish this by establishing a standard of identity for "malt liquor." This will allow producers to market the sweeter tasting product, but without the higher alcohol content.

We believe that the availability of high-alcohol beers and the advertising campaigns linking those products to alcoholic strength are contributing to our nation's drug problem. Reducing demand for drugs is one important way we can reduce health problems associated with their use.

The undersigned organizations and individuals urge the Department of Treasury to restrict the alcohol content of malt liquor to that of regular beer (no more than 5 percent alcohol by volume). We also ask BATF to review all malt-liquor advertising and product identification and take appropriate legal action against ads that violate the law. Finally, we ask you to strongly urge malt-liquor producers to halt the blatant, sexually oriented advertising that targets inner city consumers.

Sincerely,

Alcohol Policy Council
American Public Health Association
Center for Science in the Public Interest
Christian Life Commission of the Southern Baptist Convention
Coalition Against Billboard Advertising of Alcohol and Tobacco
Institute on Black Chemical Abuse
Latino Council on Alcohol and Tobacco
Legal Action Center
Marin Institute for the Prevention of Alcohol & Other Drug Problems
National Alliance of Black School Educators
National Association of African-Americans for Positive Imagery
National Association of State Alcohol and Drug Abuse Counselors
National Black Alcoholism Council, California Chapter
National Coalition to Prevent Impaired Driving
National Council on Alcoholism and Drug Dependence
Remove Intoxicated Drivers
South Carolina Commission on Alcohol and Drug Abuse
Trauma Foundation
United Methodist Church, General Board of Church and Society
Peter Bell, Minneapolis, MN
Father Michael Pfleger, Community of Saint Sabina, Chicago, IL

Please address all correspondence to:
Center for Science in the Public Interest
Patricia Taylor, Director, Alcohol Policies Project
1875 Connecticut Avenue, NW, Suite 300
Washington, DC 20009-5728 (202) 332-9110

AMERICAN INDIAN SERVICE CENTER OF HONOLULU, HONOLULU, HI
MAY 20, 1992

Representative Pat Schroeder, Chairperson
House Select Committee on
Children, Youth and Family
385 House Annex II
Washington D.C., 20515

Re: Crazy Horse Malt Liquor,

Dear Representative Schroeder,

Speaking in behalf of the 5,099 American Indian and Native Alaskan residents in the State of Hawai'i, we are opposed to the name and image of "Crazy Horse" applied to a malt liquor. We feel it is wrong to abuse Indian history and especially the spirit of such an important cultural symbol. We are disgusted because clearly this is not a legitimate marketing strategy, rather it's an attempt to market ignorance.

We call your attention to the 1980 U.S. Civil Rights Commission Report, entitled a *Quest for Survival*, which substantiates that American Indian people are forever enmeshed in defense of their civil rights, because a majority of the "general public" are totally ignorant of Indian history and the significance of Indian treaties. Hence, all we have here is a blatant attempt to profit from promoting further ignorance. Again, at the Indian's expense and ignoring our human dignity.

Chief Luther Standing Bear, the brother-in-law of Crazy House and among the first to be educated at *Carlisle* Indian School, wrote very eloquently about his people. In his book entitled *Land of the Spotted Eagle*, published in 1933, he spoke a great deal about Chief Crazy Horse and what he symbolized to his people. For example, he characterized Crazy Horse saying he was "an example of the fulfillment of Lakota ideals". Indeed, Crazy Horse and the spirit of his wisdom and demeanor have come to

symbolize Indian virtue and pride across the country (including Hawai'i). Hence, to defame his name, such as using his image to sell beer, is a racial aggression and another sign of declining American morals.

Lastly, keep in mind that purposefully Crazy Horse never allowed his image to be taken, either by picture or drawing. This too, was a sign of his bravery. Because not wishing to see his people succumb and trying to stave off destruction, he chose to lead by example. Consequently, using his name today to sell beer (even a hundred years later), is stealing his image against his will and amounts to a desecration of his memory.

Please, help us take responsible action and protect our Indian history. According to the Indian way, we all live in one world and it shouldn't matter whether or not a person lives in Hawai'i or South Africa, the need to preserve cultural integrity is the same. Therefore, we have an obligation to act according to our hearts and stop this injustice.

With every best wish,

A. Hank Raymond, President
Board of Directors

PREPARED STATEMENT OF HON. THOMAS DASCHLE, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Thank you, Madame Chairwoman, for the opportunity to testify today on the impact of alcohol labeling and marketing on Native Americans. I would also like to take this opportunity to recognize two distinguished tribal citizens from my state of South Dakota, the Honorable Gregg Bourland, Chairman of the Cheyenne River Sioux Tribe, and Mr. Mike Her Many Horses, Executive Director of the Oglala Sioux Tribe. These men are highly respected leaders and tremendous role models among the Indian and non-Indian populations of South Dakota and the United States.

During the last twelve years, I have had the responsibility of representing over 60,000 Native Americans living in South Dakota, many of whom live within one of nine reservations in my state. It has been a challenging and rewarding experience and one that has taught me a great deal about the Lakol Wico'un, the traditional Lakota Way of Life, incorporating values such as bravery, fortitude, generosity and wisdom. It is an everyday experience of survival and celebration.

Among the many vital elements of this way of life are the remembrance and honoring of leaders past whose lives have given strength to entire nations. Leaders such as Sunka Wakan Witko, Sinte Gleska, Si Tanka and Mahpiya Luta -- Crazy Horse, Spotted Tail, Big Foot and Red Cloud -- have left a lasting legacy of what the Lakota Way of Life was and how it should be practiced in the face of dangers such as alcohol and other drugs that have been placed in the paths of young Native Americans.

As role models, these great leaders have proven that, in spite of such adversity, success is attainable. They gave their lives so that a new generation could live in peace and remain true to their Lakota heritage. It troubles me to think that some young Indian man or woman is again experiencing the pain of knowing that, for some, Indian heritage and accomplishment are symbolized not through recognition of leaders like Representative Ben Nighthorse Campbell, who represents what today's young Indian could become, but through the marketing of alcohol, a drug that represents one of the greatest dangers facing Americans -- both Indian and non-Indian.

Now to the issue that has inspired this particular hearing. I am here not only to act as a representative of the Native American population of South Dakota, but also to express my personal dismay at the actions of Ferolito, Vultaggio and Sons and their subsidiary, Hornell Brewing, in invoking the name of Crazy Horse for their latest venture in the alcoholic beverage industry.

This exploitation for commercial purposes of the proud legacy of such an inspirational Oglala Lakota leader is an affront to Indian people across this nation. Furthermore, it trivializes the complex problems of alcoholism and fetal alcohol syndrome and the struggle of Indian tribes to address those problems that are undermining their very way of life, the Lakol Wico'un. The fact that the brewers have apparently targeted low-income areas with this overproof product only adds insult to injury.

I commend the leadership the Select Committee on Children, Youth and Families and my colleague from South Dakota, Tim Johnson, have demonstrated in addressing this issue. Today you will hear the concerns of over 1.9 million Indian people through the testimony of a few. However, their voice is strong and rings with the pride and spirit of a man called Crazy Horse.

It is unfortunate that we cannot be here today focusing on the accomplishments of leaders such as Crazy Horse, or of the individuals that have dedicated their lives to upholding their legacies. Instead, we are here today to determine what we can do to counteract the damage that is done to Americans, especially children, through the irresponsible actions of a company that has placed profit above respect for human values.

I have joined with Gregg Bourland, Mike Her Many Horses, and other Indian leaders in calling for a national boycott of Crazy Horse malt liquor. I ask now that the Committee join me in the effort to bring this marketing tactic to a halt and join the nation's tribal leaders in their effort to help a new generation fulfill the Lakol Wico'un.

Thank you.

STATE OF NEBRASKA

NEBRASKA LIQUOR CONTROL COMMISSION
Forrest D. Chapman
Executive Director
301 Centennial Mall South, 5th Floor
P.O. Box 95046
Lincoln, Nebraska 68509-5046
Phone (402) 471-2571
Fax (402) 471-2814

E. Benjamin Nelson
Governor

RESOLUTION
OF THE
NEBRASKA LIQUOR CONTROL COMMISSION

WHEREAS, the Nebraska Liquor Control Commission under section 53-101.01 was created to regulate alcoholic beverages within this state; to promote the public interest by liberal construction of the Nebraska Liquor Control Act; and to encourage temperance and restrict the consumption of alcoholic liquor; and

WHEREAS, the Commission is in support of the resolution received from the Nebraska Commission on Indian Affairs; and

WHEREAS, the Commission believes that to allow the sale of "Crazy Horse" malt liquor in Nebraska is derogatory and insulting to Nebraskans; and

WHEREAS, the Commission does not believe that using the name "Crazy Horse" promotes temperance; and

THEREFORE BE IT RESOLVED, that the Nebraska Liquor Control Commission requests that all Nebraska Beer Wholesalers refuse to handle the product known as "Crazy Horse Malt Liquor" thus ensuring that the product will not be sold in Nebraska. Further, the Nebraska Liquor Control Commission will request the Nebraska Attorney General's Office to determine if the Nebraska Liquor Control Commission has the statutory or rule making authority to ban such labels as "Crazy Horse".

5/92

Donald Dworak, Chairman
NEBRASKA LIQUOR CONTROL COMMISSION

c: Nebraska Commission on Indian Affairs
Commissioners
Nebraska Beer Wholesalers
Nebraska Licensed Beverage Association
United Retail Liquor Association of Nebraska
Select Committee on Children, Youth & Families
Bureau of Alcohol, Tobacco & Firearms
Nebraska Attorney General's Office
PRESS RELEASE

William R. Rhoda
Commissioner

Don Dworak
Chairman

An Equal Opportunity/Affirmative Action Employer

Fred R. (Bob) Sibyte
Commissioner

57-061 188

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Prepared Statement of John Blackhawk, Executive Director, Nebraska State Commission on Indian Affairs

Ladies and Gentlemen it is an honor and privilege to be able to present the perspective from the Indian Populations within the State of Nebraska. The Nebraska Commission on Indian Affairs only recently became aware of the issue during a regular meeting of the Commissioners. The Commission on Indian Affairs represent the Native Population in Nebraska. Membership to the commission reflects the populations from the North, South, East and West.

The issues surrounding the marketing and distributing of one, "Crazy Horse" Malt Liquor have been very disturbing to the Indian populations. As you are well aware the various Congressional delegations from South Dakota and North Dakota have also become alarmed. The major issue that I have been able to determine is one of lack of legislative authority within Alcohol, Tobacco, and Fire arms agency. Although the agency has been very cooperative, they recognize that they do not have the discretion in the area of names of deceased or living individuals being utilized in the distribution of alcoholic products. Although an official within the agency has agreed that the issue of having Crazy Horse, a noted Sioux leader, being a name on Malt liquor is outrageous and in poor taste, their legal counsel has advised that they do not have the authority to deny any distributor a license to sell a product that would choose to utilize a name of a deceased or living leader. Although the agency informed me that there is a John Adams (past president) alcoholic beverage on the market it is currently unchallenged by any relatives of the late president. This would certainly not be the case if other notable leaders past and present are allowed to become utilized within this arena. I would venture to guess that the Black Community would be outraged if their were to become a Jesse Jackson, ripple wine. The Mexican American community would also be alarmed and offended if their leadership were untilized in the sale of Alcoholic beverages. I would humble request serious consideration in the area that I have mentioned.

As you are probably all aware the Indian population residing on and off the reservations have all experience difficulty with abuse of alcohol and drugs. The Indian populations have relied upon their culture and heritage to combat these dilemmas. We collectively understand that as a young person better understands his/her culture and heritage he/she is better prepared to recognize the dangers and conflicts that uses of alcohol and drugs present. The Indian populations are beginning to formalize and strengthen the cultural transmittance of information to their young people to build the self-esteem and confidence of our future leaders. The thought of having Crazy Horse Malt Liquor on the market flies directly in the faces of our efforts. The glamorization and other marketing done through the media only makes our jobs as Educators and individuals concerned about the well being of our young people more difficult.

Although the Native American Leadership understands the tremendous hurdles presented by a complex and influential lobby, by the Alcohol industry, we will continue to tell our story whenever given the opportunity; hoping that one day the commercials and advertisement will be removed from television, that someone will recongize the harm that is being done to our young people in America. Your considerations in this matter is greatly appreciated and if there are any questions, please feel free to contact my office at your earliest convenience. Thank you.

Respectfully
Submitted by,

John Blackhawk
Executive Director

RES1992.5

RESOLUTION
OF
THE NEBRASKA COMMISSION
ON
INDIAN AFFAIRS

WHEREAS, the Nebraska Commission on Indian Affairs was formed pursuant to LB 904, and Section 81-1215 defines the purpose of the commission shall be to join representatives of all Indians in Nebraska to do all things which it may determine to enhance the cause of Indian rights and to develop solutions to problems common to all Nebraska Indians, and

WHEREAS, the Commission is aware that Crazy Horse was killed at Ft. Robinson, Nebraska; and

WHEREAS, the Commission is opposed to the sale of the malt liquor known as "Crazy Horse" in the state of Nebraska; and

WHEREAS, the Commission believes that this malt liquor is derogatory and demeaning to a great Indian leader; and

WHEREAS, the Commission believes that the sale of this malt liquor conveys a negative symbolism; and

WHEREAS, the Commission believes that to allow the sale of this malt liquor in Nebraska would convey the wrong impression of this great leader to the public; and

THEREFORE BE IT RESOLVED, that the Nebraska Commission on Indian Affairs does respectfully request that the Nebraska Liquor Commission and other appropriate entities not allow "Crazy Horse" malt liquor to be sold in the State of Nebraska.

CHAIRMAN
SECRETARY
TREASURER
VICE-CHAIRMAN

P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964-4155
Fax (605) 964-4151

TRIBAL COUNCIL MEMBERS
DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5
DISTRICT 6

May 20, 1992

The Honorable Patricia Schroeder
U. S. House of Representatives
Select Committee on Children,
Youth and Families
386 House Office Building Annex 2
Washington, D.C. 20515-6401

Dear Congresswoman Schroeder:

I thank you very much for holding the hearing today on Crazy Horse Beer. I believe your comments were very appropriate and conveyed a sense of hope to the Lakota people regarding the beer being taken of the market.

Additionally for the record, I support legislative changes which would allow BATF greater regulatory authority in banning labeling which:

1. Targets specific religions, organizations, races and people both living and dead.

2. Targets age groups below the age of 21. To be quite specific, beer advertising during Major League Baseball games can have a detrimental impact on young baseball players. I have a son, Jared, who at the age of 11 has been in Little League for three years. He can name every member of every Major League team. He watches baseball on TV whenever possible (we have satellite TV, so this is quite often) and I am afraid that he is exposed to a beer commercial every few minutes.

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka—the Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

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Upon listening to Mr, Destro articulate his position, I believe he missed one very important point. Alcohol is a luxury and not a staple item. It is a highly regulated industry. It is a destructive, yet highly demanded product of our society. Specific regulation of the alcohol industry cannot, nor should not be placed in the same category with other staple items of our great society.

Regulations of this kind are regulations which will save human lives, not businesses. I realize the existing regulations are strictly business related and are designed to protect alcohol industry members and not the general public.

Again I thank you. You are truly a champion for the Indian people and all Americans. Please continue to thrive and **may the great spirit bless you and those you love.**

Sincerely,

Gregg J. Bourland, Chairman
CHEYENNE RIVER SIOUX TRIBE

GJB:ga

cc: file

PREPARED STATEMENT OF GOV. GEORGE S. MICKELSON, STATE OF SOUTH DAKOTA

Thank you Chairman Schroeder and members of the House Select Committee on Children, Youth and Families for the opportunity to offer this written testimony for your special hearing on the Crazy Horse malt liquor beverage currently being marketed by Ferolito, Vultaggio & Sons of Brooklyn, New York.

Unfortunately, I was unable to attend your hearing in Washington on May 19, but I am sure the South Dakotans who were scheduled to testify ably represented the views of this state regarding the Crazy Horse product.

On several occasions, I have had the opportunity to speak out against this product, which sends the wrong message to the wrong people for all of the wrong reasons. I joined Surgeon General Antonia Novello at a press conference in Rapid City, South Dakota, on April 22, 1992, to urge Hornell Brewing, parent company of Ferolito, Vultaggio & Sons, to discontinue this product. In a letter dated April 24, 1992, to the Bureau of Alcohol, Tobacco and Firearms, I also urged the bureau to review its decision approving the Crazy Horse label.

We work hard to promote the positives in our state--what is good about South Dakota and the people who live here. This Brooklyn-based company probably knows little or nothing about our state or the Native American way of life, but has chosen to associate its malt liquor product with a proud heritage. This has happened before. We have battled Dakota cigarettes and other types of products that "borrow" regional names for a profit. We have been successful in convincing those companies to either change the name or withdraw them.

I have grave concerns about alcohol abuse, and share the view of Surgeon General Novello who has spoken out very appropriately about this marketing strategy and other products. We need to be vigilant and stand up for our state, its people and the proud history that is associated with it.

Perhaps the committee is familiar with some of the history surrounding Crazy Horse, but I would like to share the following with you:

Historians say Crazy Horse was a quiet and unassuming man, a leader to whom honor was important. His legacy was one of commitment and courage. Likewise, those qualities are just as important today--to Crazy Horse's descendants and to the Indian people in South Dakota. In his early 20s, Crazy Horse was appointed by the Oglala leaders as a "shirtwearer," the designation given to an official with responsibility for the tribe's welfare. Those responsible for the Indian tribes today, their spiritual and political leaders, say this beverage is inappropriate, a contradiction of all that Crazy Horse stood for.

Crazy Horse was a man of stature in spiritual affairs, so Native American leaders and others are rightfully concerned about using his name for profit. It is a particular concern when the name is associated with a product that is often abused--an evil we are battling both on and off reservations in our state and across the country.

In their research, South Dakota historians Herbert T. Hoover and Larry J. Zimmerman found Crazy Horse conveyed through forceful action what he intended, and seldom did anyone fail to get his message. I hope your message will be equally strong--the Crazy Horse name does not belong on this product.

Thank you for allowing me to offer my comments as you consider this marketing strategy and its negative impact on children, youth and families.

PREPARED STATEMENT OF DR. CRAIG R. SMITH, DIRECTOR, CENTER FOR FIRST AMENDMENT STUDIES AND CHAIRMAN, COMMUNICATIONS DEPARTMENT, CALIFORNIA STATE UNIVERSITY, LONG BEACH, CA

If you look up the word "patronize" in the Thesauris, you'll find this definition: To treat in a superciliously indulgent manner, to condescend toward. Roget did not see proposed legislation to restrict advertising such as when he wrote that definition, but my bet is that he would think the bill was a pretty good example of patronization. Despite the fact that alcohol beverages carry warning labels in plain cite, despite educational programs in schools and on the media, despite state, local and federal programs on alcohol abuse, advocates of restrictions believe that more government guidance is required.

Some advertisers and many manufacturers of legal products take offense at this intrusion on their right to speak about their product freely. But I'm more concerned about the damage it does to the First Amendment and to consumers' rights to information about legal products. My conclusion is that this legislation is unconstitutional and unworkable.

The idea that speech had to be protected at any cost dates back to Colonial days, during which the press and the public were not allowed to express themselves freely on matters of public concern. After America won its independence, it repudiated the laws which allowed the King to stifle the free flow of ideas. The Supreme Court has recognized that the protection of speech was of paramount concern to the Framers of the First Amendment.

But a second, less known context is just as important. It demonstrates that the Founders meant to protect not only political speech, but commercial speech as well. Advertising was the life blood of the newspapers of this young nation when the First Amendment was added to the constitution in 1791. America's first newspaper, the Boston News-Letter, is full of advertising. These advertisements were used by citizens to determine what to buy and where to buy it. In fact, many prominent newspapers of the day included the word advertiser in their masthead. Commercial speech was not a separate category of discourse in the

minds of the Framers of the Constitution. After all, the Founders were merchants, farmers, inventors, men of commerce who believed that making a living was essential to the pursuit of happiness.

Like the Founders, the Supreme Court has protected corporate speech from government intrusion. The Supreme Court recently reaffirmed this position in Pacific Gas and Electric v. Public Utility Commission of California. This case is directly relevant to the legislation before us today. The question in the PG&E case was whether a state regulatory agency could require a utility company to include statements of third parties in the utility's monthly billing envelopes. The California PUC argued that any "extra" space was ratepayer property. PG&E appealed to the U.S. Supreme Court.

The Supreme Court sided with PG&E[1], holding that speech does not lose its protection because of the corporate identity of the speaker. Forcing PG&E to provide space on its envelopes for the expression of particular views with which it disagreed was "antithetical to the free discussion that the First Amendment seeks to foster." Here, those seeking to have their opinion printed in another's paid space were denied such access. In the case of alcohol beverages, the message is printed on cans and bottles, therefore, there is even less reason to force them to carry an unnecessary and duplicative message in their advertisements.

The PG&E decision emerged from a line of decisions dating back to 1975, when the Supreme Court clearly recognized that commercial speech should be accorded First Amendment protection. In Bigelow v. Virginia, the Supreme Court overturned the conviction of a Virginia newspaper editor who was found guilty of running advertisements for a New York abortion referral service at a time when abortions were illegal in Virginia. The Court said, "[S]peech is not stripped of First Amendment protection merely because it appears in [commercial] form."[2]

In the following year in the landmark case of Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, the Supreme Court reaffirmed Bigelow in the context of a purely commercial advertisement. Virginia Pharmacy involved consumers who argued that the First Amendment prohibited the State from banning advertisements carrying prescription drug prices. The State claimed that this regulation of commercial speech was necessary to maintain high professional standards for pharmacists. Rejecting the State's asserted interest, the Court said that the essential issue was not whether this regulation was well-intentioned, but rather, whether the speech being regulated was protected by the First Amendment. The Court went on to repudiate "the highly paternalistic view that government has complete power to suppress or regulate commercial speech." Even though the advertiser's interest is purely "economic," the Court wrote, "that hardly disqualifies him from protection under the First Amendment."

The Court also recognized in Virginia Pharmacy that consumers had a right to receive commercial information: "As to the particular consumer's interest in the free flow of consumer information, that interest may be as keen, if not keener by far, than his interest in the day's most urgent political debate." Moreover, in commenting on Virginia's desire to encourage its citizens to patronize "professional" pharmacists by suppressing price information, the Court demonstrated a sophisticated grasp of how the market for information works:

> There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them.

However, there are rare instances when some restriction of commercial speech is allowed. The Virginia Pharmacy decision makes clear that advertising that is untruthful or proposes illegal activities can be banned. So there should be no question that States and the Federal Government can regulate and restrict advertising in the same manner that they restrict unlawful and deceptive business practices, such as fraud and swindling.

Four years after the Court decided Virginia Pharmacy, the Court announced a four-part test for evaluating the constitutionality of such restrictions on commercial speech in the Central Hudson case. The first part established criteria for determining whether commercial speech was protected at all. To be entitled to protection, statements "must concern lawful activity and not be misleading." The next three parts articulated standards for determining the degree of regulation permissible: first, "whether the asserted governmental interest is substantial," second "whether the regulation directly advances the governmental interest asserted," and third "whether it is not more extensive than is necessary to serve that interest."[3]

If the new restrictions are to pass constitutional muster, they must meet the four criteria established by the Court. Let's take the proposal to insert warnings into commercials and put it to the test:

1) Is the advertising in question misleading or concerned with an illegal product? Alcohol beverages are legal products, and their advertising is not misleading. Therefore, the proposal fails part one of the Central Hudson test. As the Court said in 1990 in the Peel case, "truthful advertising related to lawful activities is entitled to First Amendment protection."

2) Is the government interest substantial? Of course the government has a substantial interest in reducing alcohol abuse and its related problems. And there are programs at all levels aimed at solving the problem. Statistics indicate that progress has been made on many fronts. The mortality rate for cirrhosis of the liver hass dropped from 13.5 per 100,000 to 10 per 100,000.[4] The National Institute for Drug Abuse reports that

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alcohol use among high school seniors peaked in 1979 and has been declining ever since.[5] The percentage of high school seniors who report drinking in the last 30 days dropped by 11.25% between 1980 and 1988. The percent who drink daily dropped from 6% to 4.2%. Moreover weekday fatalities attributed to teenage drunk driving dropped by 45 percent from 1982 to 1988. The evidence with regard to cigarette advertising is even more dramatic: The U.S. Department of Health and Human Services reports that smoking among high school seniors has declined more than 35% in the last 15 years, including a 3% drop in 1991 alone.

It is also important to realize that there is a second interest involved in this question: the interest of the consumer.

First, many studies have found that moderate alcohol consumption is associated with an overall reduction in the risk of coronary heart diseases. More and Pearson, for example, reached that conclusion in Medicine Magazine in 1986 after reviewing 165 studies over 50 years.[6]

Second, beers with a lower calorie count, "light beers", may be better for some consumers because they may help with weight loss. Weight reduction helps prevent heart disease, high blood pressure, and other killers. It would have been impossible for those products and their healthful effects to have broken into the consumers' awareness, let alone to win a share of the marketplace, without advertising.

What advocates of the proposal must prove is that commercial warnings would reduce alcohol abuse. That leads to the third prong of the Central Hudson Test.

3) Does the regulation directly advance the asserted government interest? Remember that because of the First Amendment, advocates of this proposal have the burden of proof.

The fact of the matter is that the hard evidence says that this legislation will not directly advance its goals. For example, the Department of Health and Human services said, "research has yet to document a strong relationship between alcohol advertising and alcohol consumption."[7] The Federal Trade Commission found "no reliable basis on which to conclude that alcohol advertising significantly affects alcohol abuse."[8] While advertising expenditures indexed to 1971 have increased more than 100%, per capita consumption has remained at basically the same level up to 1990.[9] The most recent statistics show that despite a great deal of advertising consumption of alcohol beverages is down. In California's huge market where advertising expenditures are huge, beer consumption per capital has dropped from 24.3 gallons in 1986-87 to 22.1 gallongs in 1990-91; wine consumption has dropped from 4.68 gallons per capita in 1986-87 to 3.44 gallons in 1990-91; hard liquor consumption has dropped from 1.83 gallons per capita in 1986-87 to 1.56 gallons in 1990-91, according to the California State Board of Equalization, Statistic Division. The same study showed that despite massive increases in advertising expenditures on the part of tobacco companies in California, "cigarette smoking has been declining for more than a decade." The drop from 1980 to 1990, was from

123.6 packs per capita to 72.3 packs per capita. Clearly, advertising has very little to do with demand.

A Senate investigation and the Assistant Director of the Social Science Institute at Washington University, among others, concluded that advertising leads to shifts in the choices of those already in the market; it does not increase the market size nor can it be shown to have an impact on teenagers.[10] In fact, new evidence indicates that government labelling is actually counter-productive when it comes to trying to reduce alcohol consumption by younger persons. Professor Leslie Snyder and one of her doctoral students at the University of Connecticut recently released a study in the Journal of Applied Communnication Research. In the February, 1992 issue they conclude "Indeed, not only did the warnings fail to raise concerns over alcohol risks, but for drinkers they served to make alcohol even more attractive. . . . Perhaps the most important finding in the experiment was that the Surgeon General's alcohol warning boomeranged among those it need to reach the most -- the large group of drinkers. Contrary to the legislative intent of the warnings, the young drinkers in the experiment actually had higher ratings of the benefits of alcohol products when they saw the warnings. Male drinkers exposed to the warnings also expressed greater drinking intentions than their peers who did not see the warnings." While labelling raises important constitutional questions, those arguments may now be moot because the evidence from this study clearly shows that labelling is counter-productive to its goal and bad public policy.

Thus, it flunks the third part of the Central Hudson test. The sponsors claim that labelling will reduce alcohol abuse. But advertising is not the way to do it when no correlation exists between advertising and abuse. In this case, the government interest is "directly" advanced by requiring the wearing of seat belts in all cars in all states, by enforcing drunk driving laws, by making it illegal to sell alcohol to minors, and by educational programs in schools and in the community. In fact, such slogans as "know when to say when" and "designate a driver" have done more to advance the government's interest on this issue than labelling ever could.

Because labelling fails the first three parts of the test, it is clearly unconstitutional. But let me go on the fourth part of the test to be thorough.

4) Is this legislation narrowly tailored to fit the asserted government interest? Again, the answer is no.

The legislation goes after the wrong target and is too "extensive" to meet the Central Hudson test. It affects advertising that goes to a wide audience in an effort to affect a small segment of that audience. The Supreme Court has consistently ruled that you cannot pass a law that says all dogs must be killed to make sure that dangerous pit bulls are eliminated from society. The law must be tailored to meet only its goal. Perhaps that's why the National Commission Against

Drunk Driving completed a 16 month study without recommending that advertising be restricted.

Advocates labelling should know better than to tamper with our First Amendment rights. William O. Douglas and Hugo Black, for example, knew that wandering from the Founders' intentions would mean living in a land of chaotic ambiguities and an arbitrary and capricious application of the law. Justice Brennan was even more specific:

> I see no reason why commercial speech should be accorded less protection than other types of speech where . . . the government seeks to suppress commercial speech in order to deprive consumers of accurate information concerning lawful activity.[11]

The advertising in question here certainly helps consumers make intelligent choices that affect their lives.

The long run consequences of labelling are even more dire. It will start a huge regulatory ball rolling that will soon endanger most advertising and hence all free television. Most legislation says the label must "be located in a conspicuous and prominent place" in each advertisement. You can just imagine the regulations to follow: Will Sarah Lee have to put a label in her ads on top of her cakes that says eating too many might make you obese? Will Clairol have to put a label in their ads on someone's sudsy brow that says washing your hair every hour can lead to baldness? Will Jordache have to put a label in their ads on the seat of their jeans that says wearing them for an extended period of time will lead to a rash? These unworkable labels are laughable until you understand that because they ruin the aesthetics of advertising, they would lead to almost no advertising at all. And that would mean an end to free market choice as we know it.

If this legislation is as unconstitutional and unworkable as I claim, why is it being proposed at all? Could it be that its advocates think we are too stupid to know when to stop drinking, when to stop eating, when to stop shampooing our hair, and when to stop wearing our jeans? That's patronizing and it has no place in free society where citizens decide their own destiny. I believe we should remain faithful to the Founders' vision of a free marketplace of ideas where legal products are advertised honestly for the benefit of consumers.

ENDNOTES and CITATIONS

1. 106 S.Ct. 903 (1986).

2. 421 U.S. 818 (1975).

3. 477 U. S. 562, 570-72, 577 (1980). The Court re-asserted this position in Bolger v. Youngs Drug Products Corp., 103 S.Ct. 2875 (1983), In re R.M.J., 455 U.S. 191 (1982), and Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985).

4. National Institute on Alcohol Abuse and Alcoholism, "Surveillance Report #11," 1989.

5. "Annual Survey of High School Seniors," 1989.

6. See "Moderate Alcohol Consumption and Coronary Artery Disease," Medicine Magazine (1986). The American Heart Association has changed its Dietary Guidelines to reflect these findings.

7. See Seventh Report to Congress on Alcohol and Health, 1990.

8. FTC News Release, April 16, 1985.

9. See Federal Trade Commission, April 16, 1985. For updated figures, 1971 to 1987, see The Beer Institute (1989 Report).

10. "Our subcommittee record contains no facts which would justify legislation to ban/censor advertising of beer and wine products or require counter advertising." U.S. Senator Paula Hawkins, Reporting the findings of the Senate Subcommittee on Alcoholism and Drug Abuse hearings, May 20, 1985. See also Donald E. Strickland, "The Advertising Regulation Issue: Some Empirical Evidence Concerning Advertising Exposure and Teenage Consumption Patterns" Paper presented to conference on Control Issues in Alcohol Abuse Prevent, September, 1981 (Professor Strickland, Ph.D., Assistant Director, Social Science Institute, Washington University.) Reginald G. smart, "Does Alcohol Advertising Affect Overall Consumption? A Review of Empirical Studies," Journal of Studies of alcohol, (1988); Alan C. Ogborne and Reginald G. Smart, "Will Restrictions on Alcohol Advertising Reduce Alcohol Consumption?" British Journal of Addiction (#75, 1980), 293-296. Linda Sobell, et al., "Effect of Television Programming and Advertising on Alcohol Consumption in Normal Drinkers," Journal of Studies on Alcohol, (1986).

11. In Posadas v. Puerto Rico Board of Tourism, 54 U.S.L.W. at 4962 (July 1, 1986).

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June 2, 1992

The Honorable Patricia Schroeder
Chairwoman
Select Committee on Children, Youth and Families
United States House of Representatives
385 Ford House Office Building
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Madame Chairwoman and Members of the Select Committee:

Thank you for this opportunity to submit testimony for the record on behalf of the American Civil Liberties Union concerning legislative responses to the use of the name "Crazy Horse" on a malt liquor product. My name is Robert S. Peck, and I serve as legislative counsel for the ACLU, where I have responsibility for First Amendment issues. The American Civil Liberties Union is a nationwide, nonpartisan organization of nearly 300,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and, most particularly, in the Bill of Rights. Throughout its 70-year history, the ACLU has been particularly concerned with any abridgement of the freedoms guaranteed by the First Amendment.

The ACLU recognizes that this committee investigated this issue out of a laudable concern about alcoholism. It is undeniable that alcoholism is a problem that plagues our society generally and is particularly devastating within the Native American community where the rates of alcohol abuse are substantially higher than among the population at large. The choice of a name and the use of a promotional strategy that takes advantage of an apparently ready market for a legal product, however, cannot constitutionally be the subject of a legislative solution to this very real problem.

At the same time, the ACLU is cognizant that some witnesses before the committee were sincerely offended at the appropriation of a cultural symbol, Chief Crazy Horse, for a commercial product. While the product's exploitation of an historical figure is deplorable, the First Amendment remains a bar on congressional action aimed at preventing the use of that name. Instead, we suggest that education -- counterspeech to the

speech that has offended -- is the most appropriate response to the problem.

I. Commercial Speech is Entitled to Substantial First Amendment Protection.

The First Amendment generally stands as a bar against government censorship of speech. Although the Supreme Court has not afforded commercial speech the same degree of First Amendment protection that non-commercial speech receives, it, nevertheless, remains substantial. As the Court stated, "the consumer's concern for the free flow of commercial speech may often be far keener than his concern for urgent political dialogue." Bates v. State Bar of Arizona, 433 U.S. 350, 364 (1977).

Government authority to regulate commercial speech is thus limited to prohibitions of fraud and to regulations narrowly aimed at addressing significant health and safety issues. The judicial test for whether commercial speech regulations exceed constitutional limitations was enunciated in Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980). The four-prong Central Hudson test requires that: (1) the commercial speech be lawful and not misleading to qualify for First Amendment protection; (2) the asserted governmental interest be substantial to justify some amount of regulation; (3) the regulation directly advance the asserted interest to authorize the form of restriction; and (4) the regulation not be more extensive than necessary to serve that interest in order to comply with free-speech requirements. Id. at 566.

There can be no dispute that alcohol advertising promotes a lawful product. In addition, for purposes of constitutional analysis, the advertising of Crazy Horse Malt Liquor cannot be considered misleading. To be misleading, a product must do more than fail to tell the whole truth -- it must affirmatively convey false information about the characteristics of the product. To violate this standard, a product must must do more than associate itself with "the good life" when others think that just the opposite results from the product's use. The Fifth Circuit has noted that "[n]early all advertising associates the promoted product with a positive or alluring lifestyle or famous or beautiful people. Our policy is to leave it to the public to cope for themselves with Madison Avenue panache and hard sells." Dunagin v. City of Oxford, 718 F.2d 738 (1983).

In its leading commercial speech case, the Supreme Court noted:

> In applying the First Amendment to this area, we have rejected the "highly paternalistic" view that government has complete power to

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> suppress or regulate commercial speech. "[P]eople will perceive their own best interests if only they are well enough informed, and . . . the best means to that end is to open the channels of communication rather than to close them . . . ." Even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all.
>
> Central Hudson, 447 U.S. at 562 (citations omitted).

As for the argument that the advertising will reach and misinform young children, the Supreme Court has comprehensively answered this complaint by holding that "the government may not 'reduce the adult population . . . to reading only what is fit for children.'" Bolger v. Youngs Drug Products Corp., 463 U.S. 60, 73 (quoting Butler v. Michigan, 352 U.S. 380 383 (1957)).

Because use of "Crazy Horse" qualifies for First Amendment protection under the Central Hudson test, no governmental interest that is sufficiently content-neutral can be asserted that would permit regulation of the use of this name.

II. Legislation Cannot Prevent Products from Adopting Historical Names or Words that Have Significant Cultural Meaning.

While living persons have rights of publicity, privacy and reputation to prevent the marketing of a product without their name, it is a standard assumption of American law that the dead cannot be libeled. As a result, they and their heirs cannot prevent the use of a name on a product. The makers of Samuel Adams beer did not have to seek anyone's permission to call their product by that name; nor would someone who were to make George Washington or Abraham Lincoln malt liquor. Instead public outcry and boycott of those products are the only constitutional means available to remove them from the marketplace. The same is true for Crazy Horse malt liquor.

Although some places and some names have important cultural meaning to certain peoples, Congress cannot, consistent with the First Amendment, put those places or names off-limits to non-cultural uses. As with the recent controversy over the burning of the American flag, Congress would be "prescrib[ing] what shall be orthodox" with respect to those symbols, and thereby suppresses expression out of concern for its likely communicative impact." United States v. Eichman, 58 U.S.L.W. 4744, 4746

(1990). This, the First Amendment bars. It must be remembered that "[i]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Texas v. Johnson, 491 U.S. 397, 414 (1989).

III. Lack of Financial Resources to Engage in Education Does Not Excuse the Government from Its Constitutional Obligations.

Because the only constitutional option available to the government is to look beyond the distress caused by the appropriation of the name Crazy Horse and address the problem of Native American alcoholism, it would be appropriate to establish education programs of this kind. The nation has experienced incredible success in reducing tobacco use and alerting people to the dangers of drunk driving. Education programs sponsored by the government, industry, and non-profit organizations has indeed had a positive impact.

While some might say that today's budget deficit and the variety of other problems that the nation faces makes funding education programs difficult, if not unlikely, this is not a sufficient excuse to overcome the constitutional objections to the suppression of speech. Moreover, state and local governments are finding that a little money goes a long way in this regard and are also making use of targeted revenue sources. For example, California approved Proposition 99 in 1988 to discourage smoking. The measure raised cigarette taxes by twenty-five cents a pack and devoted a large percentage of the revenues to an anti-smoking campaign that has been credited with reducing the numbers of smokers in the state by an astonishing 17 percent in four years. The effectiveness of this campaign highlights the Constitution's wisdom in preventing the suppression of speech and instead enjoining government to respond to undesired speech with education and more speech.

In addressing this problem, the ACLU urges the Committee to find a similar solution that does not involve suppression of speech.

Sincerely,

Robert S. Peck
Legislative Counsel

PREPARED STATEMENT OF THE AMERICAN ACADEMY OF PEDIATRICS, WASHINGTON, DC

The American Academy of Pediatrics is privileged to submit these comments formally on behalf of its 43,000 Fellows, who are dedicated to the promotion of infant, child and adolescent health. As pediatricians, we look forward to every opportunity to serve the interests of children and youth, who are under our care. Unfortunately, ever more in recent years, that honest advocacy has impelled the Academy to underscore publicly and prominently the utter abdication of responsible corporate citizenship among alcohol producers. The shameless marketing of Crazy Horse malt liquor, for all its seriousness, is only the latest social and public health outrage in a reprehensible industry lineage which--even in recent months--includes Cisco, St. Ides and PowerMaster, to stoop no further. When will it end?

Of course it is true that today the ravages of alcohol abuse affect Native Americans at a rate six times the national average. Of course it is true that Native American infants are 20 times likelier than are other infants to be born with Fetal Alcohol Syndrome. Of course it is true that advertisers brazenly appeal to invidiously targeted (and vulnerable) racial and demographic populations, foremost among them children and youth. Pediatricians, by consequence, are grateful for any light shone on these urgent issues by thoughtful stewards of American public policy--and the Academy certainly congratulates the Select Committee for

its continuing leadership.

But it is high time now that Congress move more aggressively to treat the disease, and cease its palliative approach that only leads us back time and again to address specific brand-name transgressions which both offend sensibilities and cause real harm to the public health. In that regard, the Academy respectfully calls upon each member of this panel, and upon all of your colleagues, to hit the alcohol industry where it hurts them--and where it helps all Americans--the most. Pediatricians urge Congress this year to pass the Alcoholic Beverage Advertisement Act of 1991 (H.R. 1443, S. 664), which would place prudent health-and-safety messages on every print and broadcast alcohol advertisement.

This eminently reasonable legislation would, as part of broader public education activities, help stem the tide of newborns who suffer perfectly preventable birth defects such as fetal alcohol syndrome (FAS); it would help protect impressionable young children from clever, comic-strip marketing in the vein of Bud Man and Spuds MacKenzie; and it would help restore some responsible balance to the onslaught of alcohol advertising adversely affecting (if not directly aimed at) adolescents, who are particularly at peril. But the measure would do more than help inform Americans of the impact of alcohol abuse on vulnerable infants, children and

adolescents. It would also begin to emphasize dramatically--on the public airwaves and throughout the press--the terrible toll which alcohol abuse takes on our society at large.

Behind its sophistries, the $70 billion alcoholic beverage industry desperately opposes H.R. 1443 and S. 664 because for the first time now it appears that public policy may be moving in profound fashion to "deglamorize" alcohol. The Academy applauds the national awakening to health risks associated with alcohol abuse. We wholeheartedly support this common-sense legislation, whose aim is to provide some modest counterweight to the $2 billion worth of sophisticated ads which beckon children and youth. We commend Rep. Joseph Kennedy (D-Mass.) and Senators Strom Thurmond (R-S.C.) and Albert Gore Jr. (D-Tenn.) for sponsoring it.

Its merits are manifest and ample. Even the brief congressional "findings" in the introduction of the bill set forth a damning--and accurate--description of the impact which alcohol has wrought on Americans' health and well-being. Its purchase by those under the age of 21 is illegal in all 50 states and the District of Columbia, yet alcohol remains by far the most used and abused drug among young persons in the United States today.

Alcohol abuse by adults, of course, only worsens the plight of infants, children and adolescents. Its promiscuous reach extends to the home, to the highways--even to the womb.

ITEM: Fetal alcohol syndrome and fetal alcohol effects (FAE) afflict thousands of infants every year in this nation. FAS, the frequency of which is now more common in the United States than that of Down syndrome, is a leading cause of birth defects with accompanying mental retardation. It is entirely preventable. As many as one in six women in the peak childbearing years of 18-34 drink alcohol at levels which make their access to these proposed health-and-safety messages absolutely critical.

ITEM: American children, by the time they reach age 21, will have seen tens of thousands of advertisements promoting alcoholic beverages. Those of us with small children at home know that today's youngsters are as familiar with Bud Man as they are with Batman. And the message these children get from glossy alcohol ads is not that this drug can cause serious health risks--rather, it is one of sweeping social acceptance of alcohol consumption.

ITEM: For adolescents, the risk gets worse every day. As pediatricians, we insistently warn parents and counsel our young patients that all too frequently "the first drink"

occurs around age 12. We emphasize that it takes less alcohol to produce impairment in youth than in adults. We inform our children that today roughly 4 to 5 million young persons are dependent on alcohol or are problem drinkers. We reiterate for parents that children of alcoholics have a four times greater risk of developing alcoholism than do children of non-alcoholics. Finally, we recite firmly the litany of drunk driving--the horrible toll it takes on adolescents, the devastation it wreaks on their families.

But these vital health-and-safety messages do not seem to be getting through yet. Our children still receive mixed signals. The so-called War on Drugs merely winks at alcohol. Meantime, relentless print ads and radio and television commercials continue to glamorize alcohol, associating its use with everything from material success to physical and sexual prowess.

Despite their protestations, the industry sales pitch is hardly about changing brands--it is about adopting brands; it is about luring children to drink. As pediatricians, we believe that we must speak out on this issue in support of American youth. The relatively few advertisements recently sponsored by alcohol manufacturers--ostensibly to promote "responsible" consumption--are much too little far too late. Health-and-safety messages on all print and broadcast ads are

urgently needed now to complement the continuing efforts of pediatricians, of political leaders, of schools and, most of all, of parents, as together we seek to afford infants, children and adolescents the reasonable protections which they deserve.

FETAL ALCOHOL SYNDROME

This tragic condition, which was not officially identified in the United States until 1973, is a pattern of mental, physical and behavioral defects that develops in infants born to some women who drink to excess during pregnancy. It afflicts fully 5000 babies every year, and is characterized by a cluster of birth defects that includes the following: prenatal and postnatal growth deficiency; a particular pattern of facial malformations, including a small head circumference, flattened midface, and sunken nasal bridge; central nervous system dysfunction often resulting in mental retardation; and varying degrees of major organ system malformations.

As many as 50,000 newborns each year suffer a milder form of alcohol-related birth defects known as fetal alcohol effects. FAE are those signs in the offspring that have been linked to alcohol use during pregnancy by the mother but do not meet the criteria for full-blown fetal alcohol syndrome.

It bears reiteration that FAS, with an incidence of one to three per 1000 live births, is preventable if only pregnant women would abstain from alcohol consumption.

Although the evidence is not yet conclusive, there are well-designed studies linking an average of one to two drinks daily to decreased birthweight, growth abnormalities and behavioral problems in the newborn and infant. Increased risk of spontaneous abortion has been found at an even lower dose, namely one to two drinks, twice weekly. There is no established safe dose of alcohol during pregnancy, nor does there appear to be a safe time to drink. What is clear is that whenever drinking is stopped during pregnancy, the risk of fetal alcohol effects and consequences of alcohol exposure are decreased.

In 1981 C. Everett Koop, a pediatric surgeon, a member of the Academy and, most important, then Surgeon General of the United States, issued a health advisory recommending that women who are pregnant or who are considering pregnancy abstain from alcoholic beverages and be aware of the alcohol contents of foods, beverages and medications. In addition, he urged health care professionals to monitor the drinking habits of pregnant patients (and those considering pregnancy), to warn patients about the risks of alcohol

consumption during pregnancy, and to encourage pregnant patients not to drink.

Today, it has been reported, approximately 90 percent of the public is aware that drinking during pregnancy may damage the fetus. In another study, however, one-third of the women interviewed believe that an average daily consumption of more than three drinks is safe during pregnancy. One in six women in the peak childbearing years of 18-34 may drink enough, either chronically or episodically, to present a hazard to an unborn infant. And women are now heavily targeted for marketing of alcoholic beverages. According to "Impact," an alcoholic beverage industry newsletter, women will spend $30 billion on alcoholic beverages in 1994, compared with $20 billion in 1984.

Apart from the inordinate human tragedies occasioned by FAS, there is exorbitant social expense to consider. In America today it costs approximately $15 million to treat FAS babies. It costs $670 million to treat the nearly 70,000 FAS children under the age of 18. It costs more than $760 million to treat the 160,000 FAS adults.

CHILDREN AND YOUTH

Among teenagers, alcohol abuse has reached epidemic

proportion. Nearly 5 million of the 23 million Americans whom the government identifies as problem drinkers are between ages 14 and 17. More than 10,000 young persons ages 16-24 die in alcohol-related accidents of all kinds each year. The number-one killer of teens and young adults is alcohol-related highway death. Drivers 16-24 years old represent 20 percent of licensed drivers and less than 20 percent of total miles driven--yet they account for 42 percent of all fatal alcohol-related crashes.

According to the National Highway Traffic Safety Administration, each year more than 600 children below age 13 who are killed in highway accidents had significant levels of alcohol in their blood, two-thirds of them as high as the legal levels for adult intoxication.

Recent national surveys find children first using alcohol at 12.3 years of age, compared with ages 13 and 14 in earlier generations. In smaller regional studies, the average age for the first alcoholic drink is now eight years old. By 12th grade, 92 percent of all students have tried alcohol, 66 percent are current users and 5 percent report drinking every day. In still another study, nearly 40 percent of high school seniors admitted to heavy drinking within the previous two weeks, i.e., five or more drinks in a row. Every year another 200 to 300 young lives are lost as a result of

alcohol poisoning in "chugalug" or drinking contests--because no one considered alcohol a drug.

There is among children today a growing association between drinking and suicide. In 1987 an important study indicated that over a 10-year period in a large county there was a dramatic increase in the proportion of adolescent suicides among those who had been drinking prior to death, from 13 percent in 1972 to 46 percent in 1983. There are also reliable reports of high rates of alcohol use among children and youth with problems such as dropping out of school, unplanned and unwanted pregnancies, injuries and illness, and high-risk sexual activity.

CONCLUSION

Still the feckless "come on" from brewers and other alcoholic beverage manufacturers continues unabated, unchecked, unfettered. That has to change. The report emanating from a 1988 workshop on these issues conducted under the auspices of the Surgeon General recommended reasonably that the level of alcoholic beverage advertising be matched with an equal number of pro-health and pro-safety messages, and also recommended the inclusion of health warning messages in all alcohol advertising.

Little wonder. An earlier federally funded study found a significant relationship between youth exposure to alcoholic beverage advertising and drinking behaviors and attitudes which can lead to certain forms of problem drinking. But even more than that, the American public today is clearly indicating its baleful appreciation of the power of alcohol advertising on impressionable children and youth. More than 80 percent of 2000 adults surveyed in 1988 for the Bureau of Alcohol, Tobacco and Firearms (by the Opinion Research Corporation) believe that alcohol advertising influences under-age youth to drink alcoholic beverages. Two-thirds of those surveyed in a 1989 Wall Street Journal poll favor requiring warnings about the dangers of drinking on both alcoholic beverage containers and in alcohol advertisements.

According to 1988 figures released by the National Institute on Drug Abuse, about 2000 people that year were killed by cocaine--which, ironically, has been declared a national enemy. Alcohol killed more than 125,000 people, many of them adults who, understandably, never got the message that alcohol is the most addictive and widely consumed drug in this nation. Let us ensure that from this day forward our children and youth will get that message--and get it straight. May the Congress, to that end, move decisively to enact the Alcoholic Beverage Advertisement Act during the current term.

The Academy deeply appreciates your favorable consideration of these important issues so seriously affecting the health of American children and youth.

PREPARED STATEMENT OF THE NATIONAL COUNCIL ON ALCOHOLISM AND DRUG DEPENDENCE, INC.

The National Council on Alcoholism and Drug Dependence, Inc., is the nation's only health organization dedicated solely to advocating on behalf of alcoholics, drug dependent persons and their families. Our concern is to reduce alcohol and other drug related problems and to improve the lives of millions of Americans.

We are extremely pleased that the Select Committee is focusing on the routine practice of the alcoholic beverage industry to systematically target some of our country's most vulnerable populations. The Hornell Brewing Company's latest cynical attempt to cultivate a market comes at the expense of Native Americans. "Crazy Horse" malt liquor, a high-alcohol content beer sold in 40-ounce bottles, is offensive because of its appropriation of the name of a Native American spiritual leader and warrior. Crazy Horse malt liquor represents a cynical marketing strategy to draft new consumers among a high risk group.

Unfortunately, this is not an isolated incident. Alcoholic beverage companies have been targeting high-risk groups with high alcohol content malt liquors, fortified wines and distilled spirits for a long time.

And it is not always renegade companies that are marketing products of questionable worth. Anheuser-Busch markets King Cobra malt liquor in inner cities. Gallo supplies Thunderbird fortified wine to skid row alcoholics. Schlitz targets Schlitz Stout Malt Liquor in cheap 40-ounce single serving bottles to high risk groups.

While the committee is to be commended for addressing the Crazy Horse controversy and taking steps to protect Native Americans who are at high risk for alcoholism and alcohol related problems, we must not forget the alcoholic beverage industry has exploited African-Americans and Latinos by targeting them with similar products for many years. In fact, within the last year, several products have been put on store shelves and have drawn fire from the Surgeon General and others. PowerMaster was withdrawn after local organizers in Chicago and New York protested the offensive name and targeting of inner city African-Americans; Rap star Ice Cube pitches St. Ides and uses hand signals popular with street gangs; and movie star Billy Dee Williams sells Colt 45 by telling consumers "it works every time."

"Mainstream" beers like Budweiser and Miller have national promotions that are also problematic. Miller beer's summer sweepstakes winners will receive a pool raft complete with beer can holders, despite estimates that 30%-50% of drownings are alcohol related. Budweiser's summer prizes include boats and waterski jets. Stroh's Old Milwaukee glorifies drinking by its claim that "it doesn't get any better than this."

The National Council on Alcoholism and Drug Dependence supports several measures that are critical components to reducing the adverse consequences of high-risk alcohol use. While individual actions against egregious alcohol products are indeed appropriate,

the public would be better served by more comprehensive approaches to targeted marketing and alcohol advertising in general.

Congress should limit the amount of alcohol in malt beverages to 5 percent, with an exception for high alcohol content stouts and ales. A description of the characteristics of stouts and ales would be included along with approval for the continued manufacture and distribution.

Congress should also disallow the use of the term "malt liquor" by producers. The term implies the product contains the higher alcohol content of a distilled spirit or at a minimum the product will get the consumer drunker quicker. Promoting a product based on its alcohol content is already illegal--BATF should be further empowered to prohibit generic terms that imply strength.

HR 1443, the Sensible Advertising and Family Education Act, will provide a balanced message to the American public about alcoholic beverages. HR 1443 will require that all print and broadcast alcohol advertisements include one of five rotating health and safety messages. Alcohol ads currently present one picture--that alcohol is a necessary ingredient in a successful life. These ads lead you to believe that alcohol is a magic potion that will make all your fantasies come true.

Unfortunately, for millions of Americans and their friends and families, this is just not true. In fact, 76 million American

adults currently live or have lived with an alcoholic. Alcohol related problems affect an enormous proportion of our citizens. Every year, 5,000 babies are born in the United States with Fetal Alcohol Syndrome and another 40,000 are born with Fetal Alcohol Effects. Over 20,000 Americans die on our highways each year in alcohol-related crashes. Approximately 4.5 million teenagers are in trouble with alcohol despite the fact that it is an illegal drug for them.

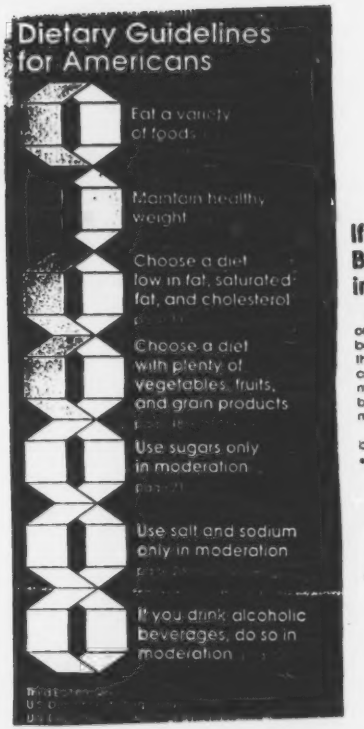
HR 1443 is designed to be one part of a comprehensive plan to begin to give Americans concrete information about the nation's number one drug of choice--alcohol.

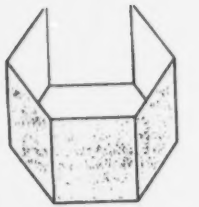
Alcoholic and drug dependent women, particularly Native Americans on reservations, have little access to residential treatment services which can accommodate them and their children and often go without adequate pre- and post-natal care. That is why NCADD also supports S 1677, the Medicaid Substance Abuse Treatment Act of 1991. This bill would allow states to use federal Medicaid funds to finance residential treatment services for alcoholic and drug dependent women and their children for up to one year post-partum. The legislation mandates a comprehensive set of services for medicaid-reimbursable programs. Representative Towns has sponsored a similar measure in the House.

The Departments of Health and Human Services and Agriculture released U.S. Dietary Guidelines in November, 1991, and included a

section on alcohol consumption. We have enclosed a copy of the alcohol language. Congress should make sure that this information is widely disseminated to schools, parents, broadcast and print media and other interested parties. The alcoholic beverage industry should be encouraged to use those federal guidelines if they are truly interested in providing the public with moderation messages and reducing alcohol related problems.

Alcoholic beverage producers make their money off heavy drinkers and the acquisition of new consumers--particularly young people. Those producers must change their promotion tactics, whether they are targeting Native Americans, inner-city African-Americans or underage drinkers. Since the industry seems to be intransigent on this issue, it is up to Congress and the administration to implement long-term, comprehensive efforts to protect the public health by working to reduce alcohol related problems in the United States.


Dietary Guidelines for Americans
Eat a variety of foods
Maintain healthy weight
Choose a diet low in fat, saturated fat, and cholesterol
Choose a diet with plenty of vegetables, fruits, and grain products
Use sugars only in moderation
Use salt and sodium only in moderation
If you drink alcoholic beverages, do so in moderation



If You Drink Alcoholic Beverages, Do So in Moderation

Alcoholic beverages supply calories but little or no nutrients. Drinking them has no net health benefit, is linked with many health problems, is the cause of many accidents, and can lead to addiction. Their consumption is not recommended. If adults elect to drink alcoholic beverages, they should consume them in moderate amounts (see box on page 26).

Some people should not drink alcoholic beverages:

- **Women who are pregnant or trying to conceive.** Major birth defects have been attributed to heavy drinking by the mother while pregnant. Women who are pregnant or trying to conceive should not drink alcoholic beverages. However, there is no conclusive evidence that an occasional drink is harmful.
- **Individuals who plan to drive or engage in other activities that require attention or skill.** Most people retain some alcohol in the blood 3 to 5 hours after even moderate drinking.
- **Individuals using medicines, even over-the-counter kinds.** Alcohol may affect the benefits or toxicity of medicines. Also, some medicines may increase blood alcohol levels or increase alcohol's adverse effect on the brain.
- **Individuals who cannot keep their drinking moderate.** This is a special concern for recovering alcoholics and people whose family members have alcohol problems.
- **Children and adolescents.** Use of alcoholic beverages by children and adolescents involves risks to health and other serious problems.

Heavy drinkers are often malnourished because of low food intake and poor absorption of nutrients by the body. Too much alcohol may cause cirrhosis of the liver, inflammation of the pancreas, damage to the brain and heart, and increased risk for many cancers.

Some studies have suggested that moderate drinking is linked to lower risk for heart attacks. However, drinking is also linked to higher risk for high blood pressure and hemorrhagic stroke.

Advice for today: If you drink alcoholic beverages, do so in moderation; and don't drive.

WHAT'S MODERATE DRINKING?

Women: No more than 1 drink a day
Men: No more than 2 drinks a day

Count as a drink:

- 12 ounces of regular beer
- 5 ounces of wine
- 1½ ounces of distilled spirits (80 proof)

BEST COPY AVAILABLE

PREPARED STATEMENT OF HANK SHAFRAN, BEVERAGE DISTRIBUTION CONSULTANTS, SWAMPSCOTT, MA

CRAZY HORSE MARKETER ATTEMPTS TO RESPOND

Hornell Brewing Company, Inc., producer of The Original Crazy Horse Malt Liquor™, requested permission from the chairwoman of the House Select Committee on Children, Youth and Families to testify at a Congressional Hearing today looking into its product, but was not allowed to speak. Had the company been permitted to present its side of the story, the following points would have been made:

- The company selected the name "The Original Crazy Horse Malt Liquor"™ as its first malt beverage in a new series of products being designed to celebrate the great American West. Planned brand extensions include "Jim Bowie Lager"™ and "Annie Oakley Lite"™ in a family of American originals.

- Hornell never intended to insult or offend Native Americans; in fact, they meant to celebrate a man who has been described as "the greatest leader of his people in modern times," a man respected for his leadership, pride, discipline, self reliance and independence.

- The name "Crazy Horse" has been used by, and is a registered trademark of, dozens of other American businesses ranging from clothing, leather goods, smoking articles, tobacco products, cosmetics and toilet preparations to pizza, steak houses, cocktail lounges, bars, saloons, discotheques, strip joints, and even restaurants like the popular Crazy Horse Restaurant in the Georgetown district of Washington, D.C.

- Other companies have introduced beers which have been named for other great American heroes including George Washington, Benjamin Franklin, Samuel Adams, Buffalo Bill and William Penn.

- There are dozens of beer, wine and spirits products and firms with Native American names including Apache, Seneca, Onandaga, Oneida, Dakota, Shawnee, Cherokee, Black Hills, Cheyenne, Sequoia, Chippewa, Mohawk, Algonquin, Black Hawk, Cayuga, Pocahontas, Thunderbird, etc. In fact, "Black Hawk Stout" was recently approved by the Bureau of Alcohol, Tobacco and Firearms (ATF) for Mendicino Brewing Company of Hopeland, CA. To claim that linkage of Native American cultural symbols to leisure beverages undermines a desired role model for Indian youth ignores the realty of the current American marketplace and smacks of arbitrariness.

- The Original Crazy Horse Malt Liquor ***is not*** targeted to inner city, underage, Native American, or other at-risk groups. In fact, it's antique-style packaging and premium price are designed to appeal to mainstream beer and wine consumers, with the expectation that many will share it with guests at restaurants and their own dining room tables.

- The Original Crazy Horse Malt Liquor adopts the flavor of America's western frontier heritage, not only to appeal to mainstream, upscale American consumers, but also to the EC - Pacific rim export market which Hornell seeks to penetrate. Foreign consumers demand a uniquely American product and the western motif helps to assure that perception.

- The Original Crazy Horse Malt Liquor should not be confused with malt liquor brands, marketed by industry giants such as Anheuser-Busch, Miller and Pabst, which are designed and sold to be consumed by one person at one sitting at prices close to soda pop. It should also not be confused with wines fortified with up to 20% alcohol like Thunderbird or Silver Satin. And, it should not be confused with brands which are exploitatively marketed and target groups involved with street gang violence.

- Malt liquors have been criticized for their strength, but they actually rank low on the potency scale:
    - Beer has about 3.5 percent alcohol;
    - Malt liquors are generally between 4.5% and 6%;
    - Wine's alcohol content is approximately 12% with fine vintage wines at 13% and above;
    - Distilled spirits range up to 50% alcohol.

Don J. Vultaggio, chairman of Brooklyn, New York's Hornell Brewing Company, made the following statement relative to his company's position: "Hornell is truly sympathetic to the rampant alcohol abuse debilitating some Native American communities and many inner-city youth. And, if allowed, we would vocally support new, aggressive strategies, including centralizing all state and federal alcoholic beverage controls in a national agency, like the ATF, and decriminalizing the alcohol marketing rules-of-the-road to ease their enforcement.

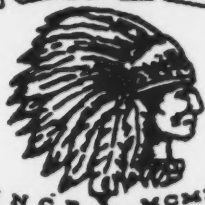
"These types of strategies would energize government, social, and cultural advocacies' efforts to reverse the devastating effects of alcohol abuse, yet guarantee the corresponding fundamental right of a small, family business like ours to fairly bring to market a lawful product, in ways assuring that the enterprise can effectively compete with the more than 30 comparable malt liquor and wine brands offered in lowest-priced, single-serve containers by Anheuser-Busch, Miller, Pabst and Gallo.

"Hornell's innovation is not only its unique packaging. Our real innovation is to try and remove the tarnished image of malt liquor as a leisure beverage. We are proud that The Original Crazy Horse Malt Liquor is twice the price of competitive malt liquors yet has less than half the alcohol content of a comparable bottle of table wine."

- # # # -

The Original

CRAZY

Malt  *Liquor*

SINCE MCMXCII

HORSE

DAKOTA HILLS LTD.

This is the ultimate in Handcrafted Malt Liquor. Crazy Horse is brewed with 100% of the finest Malt Barley and Hops

FINE BLEND

Lot No. 0690711

Forty *Ounces*

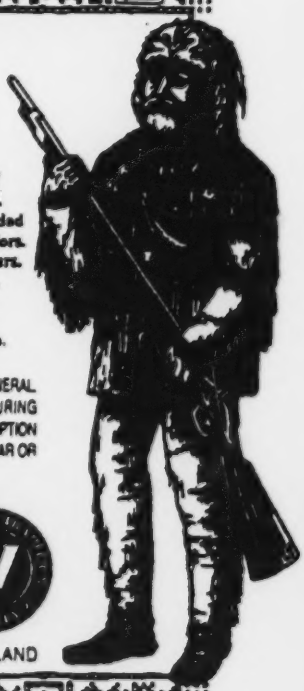
1 QT. 8 FL. OZS. 1.18 LITER

PRODUCT OF AMERICA

CRAZY HORSE

DAKOTA HILLS LTD.

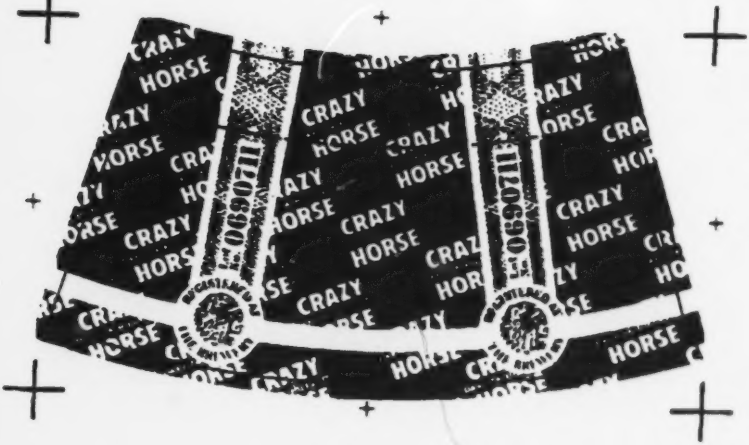
The Black Hills of Dakota, steeped in the history of the American West, home of Proud Indian Nations.
A land where imagination conjures up images of blue clad Pony Soldiers and magnificent Native American Warriors.
A land still rutted with wagon tracks of intrepid pioneers.
A land where wailful winds whisper of Sitting Bull, Crazy Horse and Custer.
A land of character, of bravery, of tradition.
A land that truly speaks of the spirit that is America.



GOVERNMENT WARNING: (1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS.(2)CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.

HV

HORNELL BREWING CO.INC., BALTIMORE, MARYLAND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